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U.S. PATENT AND TRADEMARK OFFICE
TRADEMARK-PUBLIC ADVISORY COMMITTEE MEETING

February 11, 2002

[10:00 a.m.]

U.S. PATENT AND TRADEMARK OFFICE
Crystal Park 2
2121 Crystal Drive
Suite 911
Arlington, Virginia 22202

PARTICIPANTS

1 Trademark Public Advisory Committee Members

2 Mr. Miles Alexander, Chairman

3 Ms. Siegrun D. Kane

4 Ms. Helen M. Korniewicz

5 Mr. Kimberly L. Muller

6 Mr. Joseph F. Nicholson

7 Mr. Louis Pirkey

8 Mr. Griffith B. Price, Jr.

9 Mr. John T. Rose, II

10 Mr. David C. Stimson

11 Ms. Anne H. Chasser, Commissioner for Trademarks

12 Union Members

13 Ms. Virginia L. Cade

14 Mr. Howard Friedman

15 Mr. Lawrence J. Oresky

16 U.S. Trademark and Patent Office

17 Mr. James E. Rogan, Under Secretary and Director

18 Mr. Jon W. Dudas, Deputy Under Secretary and Deputy

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1 Director

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1 MR. ALEXANDER: Good morning. I'd like to
2 welcome everybody to the Trademark Public Advisory
3 Committee. My name is Miles Alexander, and I have the
4 honor of chairing this distinguished group.

5 We are going to be swearing in the new members
6 shortly with Under Secretary Rogan coming in, and we'll
7 interrupt at that time. And the new members will have an
8 opportunity during the break if they wish to go into the
9 Under Secretary's office to have a picture taken with him
10 for public relations releases or any purposes that you or
11 the USPTO desires.

12 I think it will be helpful. There are a few new
13 faces around the table. We have some distinguished new
14 members and even a distinguished reappointed member that
15 we're delighted to have back. And I'd like everybody to
16 take just a minute to introduce themselves and indicate
17 what their association with the trademark field is, with
18 whom they are employed or active, and anything else you
19 wish to say.

1 And I'd like to start with Howard and just go
2 around.

3 MR. FRIEDMAN: I'm with NTEU 254. We're the
4 union that represents the trademark attorneys at the
5 Patent and Trademark Office.

6 MR. ALEXANDER: If everybody could explain all
7 the acronyms that are used, please. What's NTEU?

8 MR. FRIEDMAN: Nation Treasury Employees Union.

9 MR. ALEXANDER: Thank you.

10 MR. PRICE: I'm Griff Price. I'm with FHFG&D,
11 which is Finnegan, Henderson, Farabow, Garrett & Dunner in
12 Washington, D.C. And I have been reappointed to this
13 committee. And I'm pleased and gratified to be able to
14 serve in this capacity again. Thank you.

15 MR. ALEXANDER: And you actually headed the
16 predecessor committee.

17 MR. PRICE: I did.

18 MS. KANE: I'm Siegrun Kane with Morgan &
19 Finnegan. And my focus, I guess you would say, is

1 trademark litigation. And I write books and articles and
2 things like that. And I was on a committee like this a
3 long time ago which got disbanded because they felt we
4 were foreign agents, I think; or we worked for foreign
5 agents. But I'm happy to be back.

6 MS. KORNIIEWICZ: Helen Korniewicz with Chevron-
7 Texaco, a small oil company headquartered in California.
8 I do their trademark and copyright and e-commerce work. I
9 am, for the first time in my career, not the only
10 trademark attorney at Chevron-Texaco.

11 (Mr. Rogan enters the room.)

12 MR. ALEXANDER: We have the Under Secretary and
13 Director. And I'll let him introduce himself.

14 MR. ROGAN: My name is Jim Rogan, and I'm here
15 to help you.

16 MS. CHASSER: Anne Chasser. I'm the
17 Commissioner for Trademarks.

18 MR. NICHOLSON: I'm Joe Nicholson. I'm with the
19 New York office of Kenyon & Kenyon.

1 MR. PIRKEY: I'm Louis Pirkey. I'm with the
2 Austin office of Fulbright & Jaworski.

3 MR. MULLER: Kim Muller, Shell Oil Company.
4 Delighted to be here.

5 MR. KIBEN: Ed Kiben, former president of the
6 INTA.

7 MR. STIMSON: I'm David Stimson from Eastman
8 Kodak Company where I'm the chief trademark counsel.

9 MR. ALEXANDER: And also a former president of
10 INTA.

11 MR. ROSE: I'm John Rose with ABC, an American
12 Broadcasting Company in New York. I'm glad to be here and
13 hope I can help.

14 MR. ORESKY: Larry Oresky. I'm vice president
15 of POPA, which is the Patent Office Professional
16 Association. And I'm here not because I'm a trademark
17 attorney; I'm actually a patent attorney. But, of course,
18 the law allows one representative from each union. And
19 I'm that for POPA.

1 MR. ALEXANDER: We have one more nonvoting
2 member, Virginia Cade, who's not here at the moment but
3 may join us later today.

4 And I think that, rather than introduce
5 everybody around the outskirts of the table, it would
6 probably would be good to have the Under Secretary proceed
7 with his remarks and swearing in. Thank you.

8 MR. ROGAN: Thank you, Miles.

9 First, welcome to all of you. For those of you
10 who are new to the place, join the club. I'm still trying
11 to learn about the entire organization. I'm just
12 wondering, because I walked in a little bit late, if I
13 could get a show of hands of everybody who has never been
14 president of INTA. [Laughter.]

15 I'm especially delighted to greet all of you who
16 are trademark attorneys, because there is just something
17 wonderful about seeing people who are working on an hourly
18 rate of less than what first-year summer associates are
19 paid at your firms. And I think that shows a special

1 dedication to the government.

2 I'm delighted to be here and in accepting the
3 President's invitation to join the administration. I'm
4 glad I have an opportunity to work at the Patent and
5 Trademark Office; and, particularly, to work on
6 intellectual property issues at such an important level,
7 and to be surrounded by some incredible professionals,
8 this is, for me, just an incredible opportunity.

9 We have great unions that we work with here.
10 The staff here is about as professional as it gets. And
11 so after 17 years of government service and six months in
12 the private sector, it was very hard for me to resist the
13 temptation of saying yes. And I have learned, also, you
14 don't say no when the President calls. Anyway, I'm
15 looking forward to working with you.

16 If I could just take a moment or two and tell
17 you my perspective of what you do. As a former member of
18 Congress, I cannot emphasize the importance of your report
19 and what it means not only to helping us fulfill the

1 mission that we are engaged in doing, but also the
2 incredible impact it has on the Legislative Branch.

3 I stay in touch with my friends on the
4 intellectual property subcommittee and the relevant
5 appropriation committees. I'm afraid that sometimes, from
6 our institutional perspective, we try to explain, the
7 importance of allowing fees generated to go towards the
8 mission of the office, and not be perceived as a tax on
9 technology.

10 I think that plea sometimes falls on deaf ears,
11 and that the USPTO is perceived as a whining bureaucracy
12 in a city that is filled with whining bureaucrats trying
13 to hang onto whatever budget dollars that they can get.

14 People forget the uniqueness of the USPTO. This
15 is one of the few agencies that is not taxpayer supported.

16 It is fee-funded. And, unfortunately, the temptation out
17 there is to look at the USPTO not as an agency that's
18 helping to move technology in the economy, but as a cash
19 cow.

1 We're trying to bring a different perspective.
2 Sometimes I think it's lost on deaf ears. But you have
3 the unique ability to define for Congress and for the
4 Department of Commerce, and for the administration,
5 through your work and through your report, what the
6 importance of IP is to the user community, to the national
7 economy, to the world economy, and why it is important for
8 this agency to be viewed as the unique entity that it is.

9 I promise I will be working with all of you to
10 the maximum extent I can from within the system. All of
11 us value your participation and especially your work
12 product, because it's an important tool for educating the
13 public in general and, more specifically, the policy
14 makers.

15 Beyond that, I think we have three new members.

16 MR. ALEXANDER: We do.

17 MR. ROGAN: I'm going to leave it up to you, Mr.
18 Chairman. Should I invite all three of them up en mass
19 and issue the oath?

1 MR. ALEXANDER: I believe so.

2 MR. ROGAN: Thank you. Where are we doing this?

3 MS. CHASSER: We have a photographer.

4 MR. ROGAN: I better let Janice make this call.

5 MR. ALEXANDER: It should be noted, while we
6 wait, that I have great admiration for the Under
7 Secretary's financial sacrifice to serve in this role,
8 which is not insignificant. As the lawyers in practice
9 here know, we really appreciate your dedicating yourself
10 to public service.

11 MR. ROGAN: I'm going to give you my wife's
12 phone number. I'm wondering if at the break you could
13 repeat that speech for her benefit.

14 Why don't you resume the meeting. We can just
15 wait until the photographer gets here.

16 MR. ALEXANDER: I would like to continue the
17 introductions. It's hard to tell the players without a
18 scorecard. So if everybody sitting on the outskirts of
19 the meeting would introduce themselves and indicate who

1 they represent even if it's themselves.

2 MR. WEIR: I'm Bob Weir with government liaison
3 privileges. I work for (inaudible) research firm.

4 MR. TOUPIN: I'm Jim Toupin, General Counsel,
5 USPTO.

6 MR. BOURGEOIS: Doug Bourgeois, Chief
7 Information Officer, USPTO.

8 MS. BRUCE: Mary Frances Bruce, Administrator
9 for Trademark Trial and Appeal Board.

10 JUDGE SAMS: I'm David Sams, Chief of Patent
11 Trademark Trial and Appeal Board.

12 MR. LEE: I'm Michael Lee. I'm here to
13 (inaudible).

14 MR. WILLIAMS: Ron Williams, Trademark offices.

15 MR. CRAWFORD: Clarence Crawford, CFO, CAO,
16 USPTO.

17 MS. STROHECKER: Karen Strohecker, Trademark
18 Organizations.

19 MS. BERESFORD: Lynne Beresford, Deputy

1 Commissioner for Trademark Examination Policy.

2 MR. ALEXANDER: And Madam Court Reporter.

3 I would remind everybody that she can only take
4 one person speaking at a time. So if we're talking at the
5 same time, it would be very difficult for her to proceed.

6 We are going to start with Commissioner
7 Chasser's report, but I wanted to make a couple of
8 comments before we get started.

9 I think we are going to start on the
10 subcommittees pretty early this year because we need more
11 than a couple of people working on the annual report. And
12 we have a very difficult situation in the sense that the
13 appointments go -- until this last appointment of members
14 -- from July to July. And last appointment, which was
15 late, coincides with the budget would be very helpful.
16 And our report is due November 30.

17 It's very difficult when you have three members
18 leaving in July and three members coming on in July,
19 hopefully, or August, who haven't been privy to what has

1 been going on during the year to divide that report up.

2 Previously, all of you have selected specific
3 projects. I think, David, you had the TTAB with
4 colleagues. We had somebody that was assigned to,
5 basically, the public's reaction to the USPTO and
6 satisfaction level. And there were some concerns that we
7 had that the measuring of that had certain restrictions on
8 it and whether we could find a way of being very
9 comfortable with the measurement of public satisfaction
10 through surveys or otherwise. Consultants have been hired
11 for that purpose.

12 And we've, also, had a committee that dealt with
13 satisfaction, employee satisfaction, at the USPTO. And,
14 probably, we're going to try to make those assignments
15 during our break. And the internal procedural matters, we
16 will announce them as you indicate your preferences.

17 But I would hope each of those groups would take
18 a segment of the annual report so that my signature is not
19 too heavily imposed upon it as it has been in the past.

1 We have the photographer back. Let's recess
2 this discussion and commence with the swearing in.

3 MR. ROGAN: No one does this better than a
4 politician, so let's redecorate for a moment.

5 MS. CHASSER: And we'll get out of the way,
6 Miles. How's that?

7 MR. ROGAN: Why don't we do it like this. Do we
8 have three? We've got three. Okay. Why don't we put you
9 in the middle over here.

10 Let's do it like this. I'm going to turn my
11 shoulder towards you so you can see their faces. What I
12 will do is I'll swear you in all together, and then we'll
13 do like the picture we do in Congress. Individually,
14 we'll just take the picture over.

15 If you all place your left hand on the bible,
16 raise your right hands, and repeat after me.

17 "I do solemnly swear that I will
18 support and defend the
19 Constitution of the United State

1 against all enemies foreign and
2 domestic and that I will bear
3 true faith and allegiance to the
4 same; that I take this obligation
5 freely, without any mental
6 reservation or purpose of evasion;
7 and that I will well and
8 faithfully discharge the duties of
9 the office on which I am about to
10 enter so help me God."

11 (The group repeated the oath.)

12 MR. ROGAN: Congratulations.

13 GROUP: Thank you.

14 (Pictures taken of the members.)

15 MR. ROGAN: Best of luck. Anne, do we have some
16 affidavits?

17 MS. CHASSER: We have some affidavits. We can
18 catch up with them a little bit later. I'm sorry?

19 MR. ALEXANDER: I was telling Siegrun that only

1 our attorney general arranges for the draping of women
2 these days.

3 My comments were leading to the fact that I'll
4 probably ask the Trademark Public Advisory Committee to
5 recommend that we have any term of office that coincides
6 with the budget so that we come in and out at the same
7 time. And Kim is used to extended terms.

8 I'm going to suggest the reverse of it in that
9 we do not extend the terms but rather appoint somebody in
10 July of 2003 whose term will serve an extra three months
11 rather than carry it over.

12 MR. MULLER: You're not going to suggest
13 changing the budget. You're working that out.

14 MR. ALEXANDER: With those introductions, we
15 have the agenda before us. We made a couple of changes in
16 it, as you can see. The Under Secretary has made his
17 welcoming remarks, conducted the swearing in to meet a
18 schedule conflict he would have this afternoon. And we
19 reversed Judge Sams and Clarence Crawford, who is a Chief

1 Financial Officer, in terms of the presentations of the
2 public agenda that went out previously.

3 With those brief remarks, I will give it to you,
4 Anne.

5 MS. CHASSER: Thanks, Miles. Before I get
6 started, we do have on the agenda some housekeeping
7 details. An optional tour of the trademark operation.
8 And just by a show of hands, I was wondering if anybody is
9 interested in that tour so we can prepare down at the
10 south tower. I know many of the members have already had
11 the tours.

12 It doesn't look like we'll be organizing that
13 tour.

14 Also, we have invited everybody to the opening
15 of the Patent and Trademark Museum opening today at 5:30.

16 And that's at 5:30 as well.

17 We sent out, I believe about ten days ago to all
18 of the members of the TPAC, a briefing packet of
19 information which contains some general history about the

1 Agency and laid out five key policy issues that the
2 trademark organization is facing. And those issues
3 revolve around -- you need to lower the lights, Michael,
4 so --

5 MR. ALEXANDER: You look fine in full light.

6 MS. CHASSER: Excellent. Thank you, Jim. Let
7 the record note that that was Jim Toupin, our General
8 Counsel.

9 MR. STIMSON: I had a question on that. For the
10 reporter, should we give our names before we say
11 something?

12 MR. ALEXANDER: Yes, that would be helpful. And
13 that was David Stimson.

14 MS. CHASSER: The five key issues that were
15 outlined in the briefing materials that we passed out to
16 all of the advisory committee included an issue regarding
17 the filings, our current staffing level based on the level
18 of filings coming into the office, our issue to move
19 towards full electronic filing, Madrid Protocol, and then

1 electronic communications within the trademark operation
2 and how it relates to transferring information to the
3 trademark community.

4 What I ask you to do is -- during these
5 presentations, we'll actually be presenting the policy
6 questions for discussion by the TPAC because it's very
7 important for us to get feedback from the user community
8 and to solicit your opinions and recommendations that will
9 help us formulate our ultimate policy regarding these
10 particular issues. So I ask you to have a filter as you
11 listen to the presentations this morning and this
12 afternoon, keeping in mind those key issues and policy
13 positions that we sent to you prior to this meeting.

14 The USPTO relies on the input that we receive
15 from our public advisory committees. We, also, receive
16 guidance from the Department of Commerce and the Bush
17 Administration's priorities and management agenda to help
18 us develop our goals and strategies and performance
19 measures in a way that will allow us to best meet the

1 needs of our customers.

2 The Trademark Business Plan which the Trademark
3 Public Advisory Committee received at our last meeting --
4 and we've included a copy of the updated business plan
5 which was just finalized in the materials today for your
6 reading. The trademark business plan is the result of
7 planning that has considered all of these interests and
8 the direction that we received from the administration.

9 As I mentioned, our meeting today will include a
10 discussion of those key issues that the trademark
11 operations is facing and that we provided to the TPAC
12 members prior to this meeting.

13 Our Trademark Business Plan is our outline of
14 what we intend to deliver to our customers over the next
15 five years. The plan defines the office's goals on
16 timeliness, quality, our customer's market, legislative,
17 international environments, and specific patent and
18 trademark strategies for achieving these goals.

19 Our strategy, which is consistent with the

1 Administration's direction, is to implement e-Government
2 to create an efficient and effective trademark
3 registration system.

4 And our business goals, we have very simple
5 business goals. They sound simple but, as you know, very
6 difficult and challenging to deliver. And our goals are
7 high quality, timeliness, and to improve productivity.

8 The improvement of productive is something that
9 is very important. Not only to the U.S. economy when you
10 look at the gains in the U.S. economy over the last
11 several years, 10 years, they have been due largely to
12 gains in productivity. Under the Bush Management Agenda,
13 productivity is something that is very important in terms
14 of a measure of delivery of services.

15 Now, as all of you know from our previous
16 briefing, our overall strategy, in terms of delivering
17 e-Government, is that in 2002 we will achieve a 50-percent
18 electronic filing. That will be all incoming applications
19 and other trademark forms by 2002. Fifty percent

1 currently. At the end of the first quarter, we have
2 achieved a 29-percent total level of electronic filing.

3 Our budget documents for 2003 call for an
4 80-percent electronic filing. And by 2004, all
5 communications, including electronic file management, will
6 be at the 80-percent level. So as you'll hear throughout
7 today's presentation, our 2003 budget is based on delivery
8 of a fully electronic workplace which is at the 80-percent
9 level by 2004.

10 We will begin examination from the electronic
11 file on October 1, 2003, which has implications. And,
12 again, the electronic file management program will be
13 delivered by 2004.

14 These are huge challenges. But, also, I think
15 it gives us a tremendous opportunity to transform the way
16 we're doing business and deliver higher quality and better
17 timeliness to our customers through this electric
18 workplace.

19 MR. ALEXANDER: Ann, are these fiscal years or

1 calendar years you're talking about?

2 MS. CHASSER: These are fiscal years. And our
3 fiscal year, as you know, begins October 1.

4 And when you look at these percentages of 80
5 percent, we're actually looking at that as a year average.
6 So these are very high goals.

7 MR. PIRKEY: The 29-percent figure is as of
8 December 31; is that true?

9 MS. CHASSER: Right. Correct.

10 MR. PIRKEY: So do you have a figure at the end
11 of January?

12 MS. CHASSER: Not yet. Actually, we've seen a
13 slight up-tick, but it's too early to give -- we don't
14 have the final figures from January yet to share. So all
15 of the information that we'll be sharing with the Advisory
16 Committee today is information through the end of the
17 first quarter, which is December.

18 MR. PIRKEY: But if the goal is 50 percent and
19 that's an average for the year, that's going to be really

1 difficult.

2 MS. CHASSER: You're absolutely correct, yes.
3 It's going to be a challenge.

4 MS. CHASSER: Now, again, Clarence Crawford, our
5 CFO, will be going over the 2003 budget. But when he does
6 talk about the 2003 budget, clearly, we have a directive
7 from the Office of Budget and Management and this
8 Administration that the trademark operation is expected to
9 deliver an e-Government model by 2004. And we were
10 actually, in the 2003 budget, a separate line item of \$18
11 million to the trademark organization to deliver our
12 e-Government initiatives by 2004.

13 So we're on the radar screen from our
14 stakeholders. And, again, you know, the goal being to
15 improve our productivity, quality, and timeliness.

16 MR. STIMSON: Was the \$18 million what you had
17 requested?

18 MS. CHASSER: I'll let Clarence talk about the
19 specifics on our budget.

1 MR. CRAWFORD: \$18 million is what we were
2 given. That's all we are allowed to talk about. The
3 conversations that the Administration -- that's all
4 predecisional talk. So all that we can talking about is
5 what the President's budget contains.

6 MR. ALEXANDER: We can talk about anything we
7 want to talk about; right?

8 MR. CRAWFORD: Yes, yes you can. We can.

9 MR. STIMSON: We can ask whatever we want.

10 MR. CRAWFORD: Surely. I stand corrected.

11 MS. CHASSER: And, again, I talked about
12 President Bush's management agenda. And Clarence will
13 also be talking about this as well.

14 But in President Bush's 2003 Agenda, which was
15 just presented to the Hill last week, a week ago, on
16 February 4, it includes a proposal for a 21.2-percent
17 increase in the USPTO budget, which is actually the
18 largest in the history of the this agency.

19 Now, if congress approves -- and that's a big if

1 because, as you know, the budget that is presented to
2 Congress is not necessarily the budget that will be
3 enacted that we will receive in 2003. But if Congress
4 approves it, we will get the equivalent of 100 percent of
5 our traditional user fees within the Agency plus an
6 additional \$45 million.

7 So the 2003 request includes a \$239 million
8 increase over the USPTO's 2002 budget. And that will
9 allow us, under the directives of the new administration,
10 to hire 950 new patent examiners.

11 And as I mentioned earlier, the trademark
12 organization is expected to transform to a fully
13 electronic work operation by 2004 along with implementing
14 the President's management agenda, including e-Government,
15 outsourcing, and work-force restructuring.

16 So by supporting our request, the President has
17 demonstrated his commitment to improving quality and
18 reducing processing time for patents and trademarks. The
19 budget, we believe, is a clear endorsement of our progress

1 and commitment to deliver an e-Government operation in
2 2004.

3 These are the five elements of the
4 Government-wide initiatives as outlined by President
5 Bush's management agenda. And the principles of the
6 agenda are citizen centered, results oriented, and market-
7 based to promote innovation and competition.

8 And I think Clarence will be talking about the
9 various elements, the five elements, of the President's
10 management agenda.

11 One thing, in all these five areas when we look
12 at the operations in the USPTO, we actually have made very
13 good progress in many of these elements in terms of
14 competitive sourcing, a work force restructuring, and
15 financial management being one of the few government
16 agencies to receive an unqualified audit.

17 MR. ALEXANDER: Are the prior slides sort of
18 sourcing commencement?

19 MS. CHASSER: Right. That's one of the

1 initiatives. Let me see if I get this technology correct
2 here.

3 MR. ALEXANDER: Yes, 5 to 10 percent directly
4 each year.

5 MS. CHASSER: That's the guidelines that have
6 been presented by the Office of Budget and Management,
7 that each year the agencies are to achieve a 10 percent --
8 do you want to comment on that, Clarence?

9 MR. CRAWFORD: That has been their stated goal
10 when they put together the '03 budget; they decided to
11 accelerate. So the standard now is try to get 50 percent
12 of the commercially identified positions contracted.

13 Now, one of the disadvantages that PTO has is
14 the PTO, over the years, has contracted a considerable
15 number of our administrative positions. And we don't get
16 a chance to take credit for that. We're going to go back
17 OMB and try to take credited. We're well ahead of most
18 agencies in that regard.

19 So I think we're in pretty good shape. But if

1 we are using the most recent criteria from OMB, we, like
2 everyone else, will get a failing score, red, a red dot.
3 But we're going to try to appeal that. We've done quite
4 well in the PTO over the years.

5 MR. ALEXANDER: What percent of the total
6 operations are quote "commercially performed functions"?
7 If they were 100-percent, there'd be no Agency in ten
8 years.

9 MR. CRAWFORD: We've got, I think it's about --
10 we've already contracted about a third of our total work
11 force is contracting. And I think, to get where we would
12 have to be, we would be looking at about another thousand,
13 1,500. I have to get exact numbers.

14 MS. CHASSER: I can speak for the --

15 MR. ROSE: So this really refers to personnel
16 costs for the most part.

17 MR. CRAWFORD: Well, their goal is to try to
18 actually reduce the cost course by having these jobs
19 compete using an A-76. The problem with A-76 is that it

1 is a very cumbersome process. Most agencies don't use
2 A-76. When we selected positions to contract, we were
3 very shrewd in identifying positions that were going to be
4 what we call "paper-handling positions," jobs that would
5 eventually go away as the technology rolls out.

6 But we think that we will see some savings. We
7 have not seen as much in the way of savings today. But as
8 Trademarks moves to more of an electronic environment in
9 the next couple of years -- Patents is a few years behind
10 them -- we expect to see some real savings to the Agency.

11 MR. ALEXANDER: What is A-76?

12 MR. CRAWFORD: I'm sorry. It's a
13 government-wide process for -- it's an OMB circular. And
14 it's a Government-wide process for doing contracting out-
15 studies. The defense department does it all the time. It
16 takes millions of dollars to complete the study. That's
17 the reason why most people don't.

18 MS. KANE: Could you give us some more examples
19 of the type of things that you call "commercially

1 performed functions."

2 MS. CHASSER: I can give you an example on the
3 Trademark's side of the house. Now, currently, 16 percent
4 of our overall staffing in Trademarks is contract workers.
5 And what we have done is contracted out those services
6 that will be eliminated through our e-Government
7 initiative. So they're paper handlers that actually
8 process paper transactions, moving paper from place to
9 place, receiving the paper mail.

10 Once we have an electronic workplace, those
11 positions will no longer be -- we won't have those
12 positions. So we have contracted out those positions.

13 And in the Trademark organization, eventually,
14 we will have positions of paralegal, examining attorneys,
15 and then a few clerical positions. And so part of our
16 effort, of course, is the whole upscaling and providing
17 training for those positions that will be eliminated in
18 the new electronic workplace.

19 MS. KANE: Do you take bids? Are contracts

1 given out or what?

2 MS. CHASSER: Yeah, we have contracts. They're
3 competitively bid.

4 MR. CRAWFORD: Yes. They're competitively bid.

5 One of the things that we have to do is come up with a
6 government estimate of what the cost of the work would be,
7 and we take that into account when we bid out. For
8 example, a good chunk of my accounting operation is
9 contracted, both the technicians, the lower skilled, as
10 well as some of the accountants.

11 In Doug's organization, the CIO, for example, a
12 good chunk of his staff are contractors where we're buying
13 expertise for a particular skill. Or in some cases, we're
14 using -- we know these are paper-intensive jobs that we
15 don't intend to keep. So it's a combination of both
16 things that we use when we look at whether or not to
17 contract for a position.

18 MR. ALEXANDER: And CIO is what?

19 MR. CRAWFORD: I'm sorry. Chief Information

1 Office.

2 MS. CHASSER: I'm going to try to keep us on
3 track because some of the issues will also be reviewed in
4 our Chief Financial Officer's Report, and so I'm going to
5 try to be the taskmaster today if I can. If that's okay,
6 Mr. Chairman.

7 MR. ALEXANDER: That's fine.

8 MS. CHASSER: Financial Management. Again, I
9 mentioned that, as a government agency, we are one of the
10 few that has received a unqualified audit opinion for our
11 financial statements. And we've received that for the
12 past eight years. So that, I think, is very positive in
13 terms of meeting the President's agenda.

14 E-Government. Expand electronic government.
15 This administration, as I mentioned before, expects us to
16 improve performance, to automate our internal processes,
17 to reduce the cost and create easy-to-find access to
18 government services, to reduce reporting requirements, and
19 to share information quickly and conveniently. And,

1 again, the result of this will be measurable improvement
2 in productivity.

3 Now, as you all know from your experience on the
4 Trademark Advisory Committee, we, in the Trademark
5 operation, are delivering visible results on our
6 e-Government initiative. Our customers have the ability
7 to search pending, the status of pending and registered
8 trademarks, to conduct a preliminary search prior to
9 filing an application, access to general information and
10 manuals.

11 They can obtain weekly information on marks
12 published, registered, and renewed. They can file
13 applications and conduct nearly all of their
14 trademark-related business electronically from our new
15 USPTO web site.

16 We've made and will continue to make substantial
17 changes in how we do business by integrating electronic
18 systems and processing that will result in performance and
19 productivity gains.

1 Again, we want to link the performance and
2 results to our budgeting process. And that is what we
3 have done in our five-year business plan because we have
4 identified long-term goals and performance objectives that
5 was the basis for our 2003 budget request to the
6 Administration and to Congress.

7 Again, the Administration has supported the
8 USPTO's e-Government request in full by providing a budget
9 increase of \$18 million to the Trademark organization.

10 Now, of the \$18 million, slightly more than half
11 of the increase is for our Chief Information Office's
12 organization to complete the development and the delivery
13 of an electronic file management system. And the
14 remainder of that is for Trademarks to complete our
15 reengineering of our internal processes; and that is how
16 we do business and to support electronic filing.

17 In addition, the Office of Quality Management
18 and Training will receive about \$250,000 to develop a
19 web-based training for Trademark employees.

1 MR. ALEXANDER: Anne, how does the \$18 million
2 compare to the fee intake of the office?

3 MS. CHASSER: Well, as I mentioned before, the
4 budget, our underlying budget, if I'm answering the
5 question correctly, would provide total access to the user
6 fees coming in for this fiscal year. And then above that
7 -- are you talking about the surcharge issue?

8 MR. ALEXANDER: I'm talking about whether there
9 are any diversions of funds that have been removed from
10 that which is allocated, in other words, if we take in
11 taking \$20 million and \$18 million was allocated back.

12 MS. CHASSER: Well, I'm going to let Clarence
13 speak to this.

14 MR. ALEXANDER: Okay. We have to defer that.

15 MS. CHASSER: Okay. Yes. So finally in closing
16 on my overarching layout for big picture, the strategic
17 direction of where we are going, that this Administration
18 fully supports our progress and expects us to deliver on
19 our commitment to a fully electronic workplace by 2004.

1 And how we're going to get there is outlined in our
2 business plan.

3 So I think at this point, unless you have any
4 questions about where we're headed today --

5 MR. ORESKY: When Clarence says a third of the
6 workforce is contracted, did he say 15 percent of
7 trademarks were contracted? That's based on FTE, those
8 percentages.

9 MR. CRAWFORD: Right.

10 MS. CHASSER: Correct.

11 MR. ORESKY: Thank you.

12 MS. CHASSER: I think I'll turn this over to
13 Clarence Crawford now if you like.

14 MR. ALEXANDER: Clarence, would you like to stay
15 up here or would you like to stand?

16 MS. CHASSER: I can change places with you.

17 MR. CRAWFORD: Good morning. What I will do is
18 we'll go to the first slide. I think that the first thing
19 I want to mention about the business plan that it is, in a

1 way, unique for the PTO. In the past, the PTO has put
2 together incremental budgets where it was harder to figure
3 out exactly what our goals would be and where we were
4 going and what the resources requirements would be over a
5 period of time.

6 This five-year business plan makes an attempt to
7 more clearly state exactly where we're going, what the
8 requirements are, how long it will take, and the dollars
9 associated with it. We are responding to comments and
10 concerns from the IP community, as well as OMB and the
11 Hill, in terms of doing a better job of defining our
12 requirements.

13 The other thing that was interesting is that we
14 were told to put together requirements without concern for
15 fee income. So if your requirements, in theory, actually
16 exceeded your income, don't worry about it. And you can
17 see, as Anne had mentioned, from our standard income we
18 got all of that income plus about \$45 million of the
19 surcharge to make up the difference so that we could fund

1 the business plan.

2 We tried to go back to basics, to look at basic
3 examination functions. And so that the basics of what our
4 business is and the concentrate on our core business. And
5 we came up with a couple of very simple goals as Anne
6 mentioned, improving the quality of our products and
7 services and also trying to reduce our processing time.

8 One of the other goals that's not as clearly
9 stated, but it's implied there, is that we're going to try
10 to improve our productivity over time as well.

11 Let's go to the next.

12 Anne mentioned that we got a 21-percent increase
13 over 2002. I've been in the budget game and working on
14 high-profile projects for the past 14 years. I think this
15 is about the largest increase I've seen. This is my third
16 or fourth agency. This is the largest one I've seen for
17 any agency I've been associated with. And having had
18 central oversight responsibilities, I can't think of
19 another agency that comes to mind that has received a

1 21-percent increase over its base.

2 I think that's bodes well for the PTO. I think
3 it says that the Administration supports IP, intellectual
4 property. I think it, also, says that there is a comfort
5 level with the business plan, and that we're trying to
6 move in the right direction. We did a reasonably good job
7 of outlining where we wanted to go.

8 It has \$100 million in carryover. We'll talk
9 about that a little bit later.

10 The other thing I wanted to just mention about
11 the budget environment is we have passed the second
12 hurdle. We submitted a package to OMB, and the President
13 was very generous in his support of us. And we come out
14 of that process with a 21-percent increase.

15 Well, we're a long way from being home. We now
16 are part of the Commerce-Justice-State Appropriation.
17 We're in there with the Justice Department and its
18 programs and its needs for funding to support Homeland
19 Security. We're in there with the State Department with

1 its international responsibilities, especially in the wake
2 of 9-11.

3 So holding onto the 21-percent increase may be
4 at times even more challenging than actually getting it on
5 the table the first time. There's going to be enormous
6 pressures, the economy, depending on how quickly the
7 economy recovers, and the like.

8 Anne mentioned the two or three major items that
9 were supported by the business plan. I want to give
10 Trademarks a compliment. I want to compliment Trademarks
11 on the electronic filing and its transition to electronic
12 operations.

13 This was very attractive for OMB. I'll speak a
14 little bit about it. Usually, when you say good things
15 about them, they don't necessarily worry too much if you
16 talk a little in-house. It's when you're not necessarily
17 in agreement where they're most concerned.

18 OMB was very complimentary of Trademarks and its
19 electronic environment. They were very interested. My

1 sense is that it was just a very attractive package that
2 Anne and her folks put together.

3 There's a lot of work that needs to be done,
4 both within Anne's organization and the Chief Information
5 Office organization, to make it work. But if we can pull
6 this off, we will probably be on the front end of Federal
7 agencies who really, really have created an electronic
8 environment.

9 A lot of people have talked about it; but we,
10 actually, will be able to demonstrate something and show
11 something in a couple years. So that's very attractive.
12 And OMB zeroed right in on that.

13 Please go to the next slide. Are there any
14 questions?

15 MR. ALEXANDER: What does the \$100 million
16 carryover indicate?

17 MR. CRAWFORD: Can I pick that up later? I have
18 a slide that speaks to that, if you don't mind.

19 MR. ALEXANDER: That's fine. Okay.

1 MR. STIMSON: A question in terms of the PTO
2 being in the forefront of electronic filing and presumably
3 serving as a example and a mentor for other agencies which
4 probably are under similar mandates to go more electronic.

5 What is the process for or the obligation or what's been
6 set up to share that knowledge with other agencies?

7 I mean, are there any agencies in here looking
8 at what you're doing? Have you been -- is part of your
9 mandate to put together a report to them explaining how
10 you do it? How will this knowledge be passed on to the
11 rest of the government?

12 MR. BOURGEOIS: Not yet. There are a lot of
13 ways which we share information to the CIO council and
14 committees to that council. Although with respect to
15 Trademarks, there's been a lot of information shared for
16 the TEAS electronic filing system already through many
17 mechanisms outside the CIO, CIO council, for example,
18 e-Government, e-Government conferences and such like with
19 respect to the technical architectures. From the business

1 standpoint, I'm not aware of. Maybe you can handle that,
2 so...

3 MS. CHASSER: Well, I can speak to that.

4 Actually, the Trademark organization is on the
5 radar screen within sort of the network, inside the
6 beltway. An organization, the Council for (inaudible)
7 Government, is actually their responsibility is sharing
8 information, acting as a clearing house, on innovation
9 within government agencies. And so we have many
10 organizations that are looking at transforming to
11 e-Government models that actually come in and visit with
12 our folks and see our operations. So informally, we're
13 sort of connected.

14 MR. STIMSON: And a follow-up question. Are you
15 able to do whatever you want to do and what's best for the
16 Trademark Office from a technical standpoint? Or are you
17 sometimes told, well, because what you're doing we want to
18 have go to the rest of the government, we want you to use
19 a particular system? Because that's what message...

1 The reason I ask that is within my company,
2 Kodak, there's a lot of that where they're trying to put
3 the whole company on one system. And sometimes a
4 particular part of the company uses something which may
5 not be best for them for the greater good.

6 Are you seeing any of that, or do you have total
7 discretion to do what you want to do from the technical
8 end?

9 MR. BOURGEOIS: That's a very good question.
10 Our technical standards are decisions that are made
11 internal to the USPTO. We do that in concert with the
12 Trademark decisions for technology that are used within
13 that organization. So while we do it here from an overall
14 governmental standpoint with policies and procedures and
15 guidelines, the specific technologies so far and will
16 continue to be within the discretion of the USPTO.

17 MR. STIMSON: Thank you.

18 MR. CRAWFORD: And, Doug, our Chief Information
19 Officer, also sits on a government-wide e-Government task

1 force that's chaired by the Office of Management and
2 Budget.

3 This is gives you, at a very high level, what
4 the increase is. When you put our increase in context
5 with the rest of the Federal Budget, my understanding is
6 that, if you pulled defense and some of the Homeland
7 Security functions out of the budget, what you will see is
8 that the rest of the budget is growing at a rate of about
9 2 percent. A number of agencies and programs are actually
10 flat, and a few have actually been reduced.

11 So when you look at the level of commitment from
12 this Administration, have that in as your back drop, what
13 we at a very high level -- we have a lot of -- that is,
14 when you're operating about at a billion- dollar base,
15 there's certain mandatory things that you have, rent goes
16 up, certain contract costs go up. They're unavoidable.
17 OMB supported us in that.

18 You'll see in the pay adjustments. We have the
19 locality pay and the full year. And what they, also, did

1 is, which doesn't impact Trademarks as much but more on
2 the Patent side, they not only funded what we wanted to do
3 in '03, but they're giving us as large a pay adjustment as
4 they did. They actually endorsed our hiring plans for
5 '02, mainly on the Patent side. Very unusual for them to
6 do that.

7 And then the next item is that there is a
8 government-wide, or at least an OMB-led effort, to make
9 sure that all of the agencies, especially the fee-funded
10 agencies, pay the full cost of the pensions and health
11 benefits.

12 They've tried this for the last two or three
13 years. Every time the Hill drops it. I don't know where
14 the Congress will come by it. If I had to hazard a guess,
15 I would imagine that Congress will drop that requirement
16 as well again this year.

17 So that first group of adjustments we call
18 adjustments to the base. And that's about \$117 million.

19 You see, then, the next largest one is the \$54

1 million, \$55 million for workload increases. And then you
 2 see the other is Patent. And then we come down to the
 3 Trademark e-Government.

4 I think this number is pretty close to what we
 5 had asked, so I think it should help us out quite a bit.
 6 Yes, sir.

7 MR. ORESKY: The 2002 locality pay adjustment,
 8 obviously, that hasn't been approved yet; correct?

9 MR. CRAWFORD: We're talking -- this does not
 10 just -- this covers everyone.

11 MR. ORESKY: Okay. But at least for the larger
 12 segments, they hadn't been approved yet; is that correct?

13 MR. CRAWFORD: No.

14 MR. ORESKY: And if it's not approved, what
 15 dollar amount will that represent and what will we do with
 16 it if we don't spend it on the locality pay increase?

17 MR. CRAWFORD: This is a Patent issue. It
 18 relates to the special pay that we secured for patent
 19 examiners under special pay. We were able to increase the

1 base salaries of patent examiners on average from 10 to 15
2 percent, depending upon where they are in the pay scale.

3 Like everyone else, the Federal Government
4 employees get a pay adjustment or a pay raise, an
5 increase, in January. The increase comes in two parts.
6 One is sort of a base-pay adjustment. The second piece of
7 it is something called "locality." So I believe we
8 receive -- what was it? -- three and a half percent this
9 year. Larry?

10 MR. ALEXANDER: Well, what does "locality" mean?

11 MR. CRAWFORD: It's an attempt to take into
12 account that certain geographical areas are more expensive
13 while others are less expensive. We're in one of the
14 higher-cost areas, so we get a good portion of the
15 locality. If we were in a low-cost area, we wouldn't be
16 getting the three-and-a-half percent.

17 What is in question for the patent examiners is
18 whether or not -- typically, with special pay, they do not
19 allow you to have locality. So it's usually

1 three-quarters of the increase is base pay; the remaining
2 quarter is locality. And the question is whether or not
3 the Office of Personnel Management is the one that makes
4 the decision whether or not they will allow us to grant
5 that increase to the patent examiners. We don't know
6 whether that will happen.

7 MR. ORESKY: Well, my question was: If they
8 feel that money is in our budget, what do we intend to do
9 with it if it doesn't go towards locality pay?

10 MR. CRAWFORD: We have a host of other
11 requirements.

12 MR. ALEXANDER: I think we need to really --
13 Trademark Public Advisory Committee, I'm not sure that
14 that's not a more appropriate question for the Patent
15 Public Advisory Committee unless --

16 MR. ORESKY: Well, it relates to the budget.

17 MR. ALEXANDER: Unless there's any aspect of
18 that that passes to the trademark examiners, which I think
19 that it doesn't.

1 MR. CRAWFORD: No, it doesn't. It doesn't
2 really effect the Trademark side of the house.

3 This is just an overview of the Patent goals.
4 We won't bother to go there. They're very similar to
5 Trademark goals. It's 52 times. But again, it would be
6 specific to Patents attempt to distill at a very clear set
7 of goals.

8 MR. ALEXANDER: Clarence, with new members,
9 would you indicate what portion of the total budget is
10 Trademarks and we'll have some feel for that?

11 MR. CRAWFORD: It's about an 85-15 split.
12 Eighty-five percent of the income in dollars are generally
13 related to Patent, the Patent side of the house. On the
14 Trademark side, it's about 15 percent of that.

15 We are not allowed -- we maintain a fence
16 between patent and trademark fees. One of the tools that
17 we use to help maintain that fence is we are one of the
18 few Federal agencies, and probably one of the few
19 organizations of our size in the country, that have

1 actually implemented activity based costing. So we're
2 able to track our cost and to make sure that we do not
3 violate the fence between patent and trademark fees. We
4 can't spend Trademark money on Patents which probably
5 could go the other way.

6 MS. KANE: Oh, really? We can get some Patent
7 money.

8 MR. CRAWFORD: We don't want to. There's not
9 the restriction.

10 MS. KANE: I see. That was my question.

11 MR. CRAWFORD: Our goal is not to do that. But
12 we clearly have a restriction on moving trademark fees to
13 cover patent. And we try to honor that by not shifting
14 money the other way either.

15 MR. ALEXANDER: Now, is the fee-supported
16 concept in a self-supporting Patent and Trademark Office
17 fully allocated cost? In other words, do those fees
18 envision covering retirement pay and various other general
19 administrative matters?

1 MR. CRAWFORD: It covers everything very clearly
2 with the exception of the retirement and the health issue
3 that OMB is raising. The way the Federal Government funds
4 pensions for its employees, what it has done in the past,
5 is it has one account that the Office of Personnel
6 Management has that manages and pays all annuities and
7 health benefits related to pension.

8 What OMB is attempting to do -- if they can get
9 the agencies, especially the fee-funded agencies, to pay
10 their share, it would require a law, a statute, a law to
11 actually allow that to happen. Then in theory what it
12 does is it reduces the overall cost to the Federal
13 Government and to the taxpayers.

14 Aside from that, we generally cover our costs.

15 MR. ALEXANDER: The reason I asked the question
16 is I've operated at a relatively high level of outrage
17 with respect to the diversion of hundreds of millions of
18 dollars of user-fee funds from the Patent and Trademark
19 Office. And my level of outrage would go down if we're

1 not funding a real cost. So some of those diversions
2 actually go towards retirement. Am I accurate in saying
3 some of those diversions actually do fund retirement? And
4 if so, what percentage of the diverted funds?

5 MR. CRAWFORD: What I can accurately state is
6 the funds that we don't receive go into the general fund
7 of the Federal Government. And it's largely in the
8 Commerce-Justice-State Appropriations. The Office of
9 Personnel Management is not in that account.

10 MR. ALEXANDER: Well, I understand that. But if
11 retirement funding would cost \$200 million a year to fund
12 and they are diverting \$200 million dollars a year, even
13 though they're not putting it into that, it would say that
14 we are really getting all of our money back for actual
15 costs. I don't have any concept of what percentage of the
16 diverted funds, if we were funding retirement, would have
17 gone to retirement and health.

18 MR. CRAWFORD: What we are estimating on is that
19 our annual cost in that area would be about that \$30

1 million that was shown on the other page. So that's the
2 cost --

3 MR. ALEXANDER: So it's a very small percentage
4 of the diversion.

5 MR. CRAWFORD: Small percentage.

6 MR. ALEXANDER: I continue my outrage.

7 MS. CHASSER: It is so noted.

8 MR. CRAWFORD: Why don't we move to the
9 Trademarks, if we may. Obviously, if there are more
10 questions about Patents, we can do more. I think we need
11 to back it up. Okay.

12 MR. ROSE: I think it's the next slide. It's
13 out of order.

14 MR. CRAWFORD: Oh, it's out of order. Okay.

15 We'll stay here with the Trademark Initiative.
16 This is the one area. The e-Government is the one area
17 that, as we had talked about, OMB did fully fund. And
18 Anne will talk more about this, I think, in her next part
19 about some of the time lines and what's in.

1 But suffice it to say, it allows us to move
2 towards creating an electronic environment where we
3 believe that there will be continued savings and increased
4 productivity from that. And again, it makes it a very
5 attractive initiative.

6 The area under workforce flexibility is one that
7 Trademarks also came to us and to the corporate and said,
8 we need to look long term at how we were staffing our
9 organization. This was before there was a -- I remember
10 talking with Anne and Bob before the economic downturn
11 that we've seen.

12 But in terms of knowing that they were going to
13 roll e-Government, knowing that we expect the technology
14 to help us with our productivity in the future, we needed
15 to think differently about how we staffed the
16 organization.

17 And I think what we've seen over the last year
18 or so with respect to the effects of the economy on our
19 filing levels and our income and workload, I think it

1 really underscores the need to look at that and look at
2 how we will create an organization from where we are today
3 that will support what we've seen to be fairly traumatic
4 swings in filings.

5 Again, if you look at what the economists are
6 saying about the economy, everyone believes the economy
7 will turn up. But I don't think we're going to, I
8 believe, see the return to the '90s-type growth for some
9 period of time. And probably what we'll see is steady
10 growth but not at the same rates and maybe with some bumps
11 along the way. This will mean we'll have surges and sort
12 of drop off, and we're going to have to manage that
13 differently over the next -- I would say -- over the next
14 three to five years. And we should anticipate that. And
15 this is what the workforce flexibility initiative has in
16 mind.

17 I think Anne will get into the goals themselves.
18

19 But you can see that we have a goal of cutting

1 the error rates down to the 3 percent, which I believe
2 will be one of the lowest we've ever had in the trademark
3 area, and improving customer satisfaction. The pendency
4 goals, I believe, are going to be quite attractive. And
5 they're in the '04 and '06 time frames.

6 I think you're going to talk about these
7 initiatives in some detail.

8 MS. CHASSER: Right.

9 MR. CRAWFORD: I think we'll let you do that.
10 Let's go to the numbers on Slide 9.

11 This comes from our business plan. And I know
12 Anne will talk about this in the next segment. But I want
13 to zero in on trademark filings for 2002 that we were
14 anticipating a relatively flat filing rate. We had
15 completed the year 2001 at just below 300,000. The
16 economy reports at the time were in the fall forecasting
17 an upturn in the economy in the first or second quarter of
18 calendar year 2002. That hasn't really materialized.

19 So what we're working in -- and we are about 30,

1 60 days away from having really good numbers. But it
2 looks like we will actually see trademark growth below
3 300,000.

4 One of the things that we did early on was, from
5 being a fee-funded agency and wanting to be responsible,
6 we started looking at how low would the filings and the
7 income have to drop before we would have a funding
8 shortfall. And we're looking at anywhere from zero to 20
9 percent. It looks like we're going to be okay. Beyond 20
10 percent could present a funding problem for 2002. We're
11 monitoring that on a bi-weekly basis, and we're meeting
12 with Trademarks.

13 One of the other things that we're, also,
14 looking at is, if the economy continues to be soft and
15 we're soft into 2003, then, again, sort of from a funding
16 standpoint, understanding what that means in terms of
17 workload and funding.

18 And, again, it underscores the initiative
19 Trademark has on the table about thinking differently

1 about the workforce and being more flexible in how we
2 manage the workforce.

3 MR. ALEXANDER: Clarence -- or Anne, are you
4 going to get into what happens if the funding is short?

5 MS. CHASSER: I think that's one of the issues
6 that we want feedback from the user community about what
7 options are available and how users would want their fees
8 used in an environment where there is a huge swing. Yeah.
9 So I'm hoping to have a lively discussion, an important
10 discussion, where we want to hear from the user community.

11 MR. ALEXANDER: This will be after you speak.

12 MS. CHASSER: Yes.

13 MR. ALEXANDER: Thank you.

14 MS. CHASSER: But Clarence will be here to talk
15 about the budget issues.

16 MR. CRAWFORD: I don't want to steal Anne's
17 thunder, so I'll defer to her.

18 MS. CHASSER: It's no thunder; trust me.

19 MS. KANE: Rain perhaps.

1 MR. CRAWFORD: It is something that we --

2 MR. FRIEDMAN: You're saying that your present
3 thinking is that the 2002 budget should be okay with a
4 zero-percent growth to a 20-percent decline.

5 MR. CRAWFORD: That's correct. But as we look
6 through into '02. Because if the economy stays soft,
7 we're assuming about a 10-percent growth in '03. The
8 economic recovery seems to be slipping. A 10-percent
9 growth may not materialize. And we're trying to figure,
10 then, where we will be.

11 The problem is that right now no one seems to
12 have a good handle on the economy. Nine-eleven has sort
13 of screwed up a lot of things. Our models are generally
14 very good, provided the redundant economic modeling for
15 about 20 years. They're very good when the future looks
16 like the past. But when the future changes dramatically,
17 the economic models, the other models that we use, become
18 significantly less reliable.

19 We are talking with other trademark offices

1 around the world. And we're, also, seeing there that it
2 is softer as well. And we're, also, watching very
3 carefully patent filings and looking -- Trademarks has not
4 been affected the way Patents has been has been affected.

5 Post 9-11, we've had terrible problems receiving
6 our mail. Our general mailing address and where most of
7 the patent mail applications and fee income has been
8 coming through Washington is through that Brentwood Mail
9 Facility that was shut down.

10 That mail is being irradiated. We're way behind
11 in mail. We're not sure whether it's filings are down or
12 whether there is still a backlog as a result of the
13 problems with Brentwood.

14 It processed 5 million pieces of mail a day.
15 The mail that we are receiving through that facility is
16 highly irradiated, and we're having to recopy because it
17 crumbles. So we have some strategies to move the mail and
18 to get around that in addition to encouraging people to
19 use electronic.

1 Trademarks doesn't seem to be as affected
2 because we use an Arlington address here in Trademarks and
3 only a small portion of the trademark mail actually comes
4 through the Washington zip code. So we're not the only
5 ones. There are about 200 unique Federal zip codes in
6 Washington. Best I can tell, most of those agencies are
7 experiencing the same problems.

8 The critical nature for us is that our money
9 comes in that mail. So where other agencies are fully
10 funded through taxpayers, the mail is important to them;
11 but their checks aren't in there. Ours are.

12 MS. CHASSER: Before we move on if I may
13 interrupt. On the page 9 slide, when you look at the '02
14 budget, you can see that the '02 budget is based on a
15 300,000-class level of filings. And when we talk about
16 maintaining the model in '03 and how we are affected in
17 '03 by where we are in '02, you'll notice that we budgeted
18 for a 10-percent increase; but that's based on a
19 300,000-level filing.

1 Now, if our filings drop, we're not looking at a
2 10-percent increase to reach those numbers. We're looking
3 at a significantly higher percentage increase.

4 So in the interest in full disclosure, and in
5 light of our discussion that we'll have a little later, I
6 wanted you to all note that these numbers are not -- we
7 could have a more serious problem than we think if filings
8 don't increase as much as we think.

9 MR. PIRKEY: What were the filings in the first
10 quarter?

11 MS. CHASSER: The first quarter, we were down 23
12 percent over the previous year of filings. Now, again,
13 our economic model on that -- and I don't know if you're
14 going to address it. Our Office of Corporate Planning has
15 indicated that, based on the economic model, we have a
16 range of anywhere from 210,000 classes to 260,000 classes
17 this year.

18 MR. CRAWFORD: One of the things, the reason why
19 we're looking, is we plan -- we do this anyway -- is at

1 midyear, to take another snapshot. One of the things with
2 the filings in the Trademark, more so than on the Patent's
3 office, Trademark's filings have historically in the fall
4 have come down. There's usually a low period for
5 trademark filings.

6 Trademark filings start to pick up after
7 Christmas and after the holidays. In January, we start to
8 see a (inaudible) of it. February, you have a little more
9 data. About March, we usually have enough data that we
10 have a reasonable confidence level as to what range of
11 income. We're looking at it right now. Trademark's
12 outlook.

13 The income is still within an acceptable range.

14 But if the trademark filings don't pick up, that delta
15 may increase; and we may actually have a funding problem.

16
17 And as I say, I think if I had to hazard a guess
18 today, I think we'll probably be okay through '02. It's
19 going to be close. But '03 may be more of a problem if

1 the economic recovery continues to slip as it has.

2 MR. ALEXANDER: Okay.

3 MS. KANE: When you do an analysis of filings,
4 do you consider how many are U.S. companies versus foreign
5 companies in this country as well as when you look abroad
6 to see what is happening?

7 MS. CHASSER: When you look at historic
8 patterns, typically 15 percent, no matter -- 15 percent of
9 the filings are non-U.S. filings. And that just is across
10 the board. You know, I think it's just proportionate.

11 MS. KANE: Would you be expecting that -- maybe
12 this is getting ahead too far -- this would pick up as the
13 result of the Madrid Protocol?

14 MS. CHASSER: Interesting question. We look at
15 other developing countries that have joined Madrid
16 Protocol. When we looked at Japan and the U.K., what we
17 have seen is, typically, in the early years, it's a very
18 gradual increase in filings. So we're not expecting,
19 based on what is happening in other countries, to see a

1 huge influx of filings initially,

2 MS. KANE: But the U.S. companies may be a
3 little bit different. Well, no --

4 MS. CHASSER: Well, many of the U.S. companies
5 have filed under the Paris Convention already. So, you
6 know, unless it goes counter to what has happened in other
7 developing countries, we're looking at probably a gradual
8 increase.

9 MR. ALEXANDER: Griff, do you have a question?

10 MR. PRICE: Yes. Anne, could you state the
11 figures again that you mentioned for the first quarter?

12 MS. CHASSER: I'll be talking about that later
13 in the presentation. But --

14 MR. PRICE: But my understanding is that the
15 figure that you mentioned --

16 MS. CHASSER: Oh, the first quarter of this
17 fiscal year, we were 23-percent below the filings of last
18 year at the same time.

19 MR. ALEXANDER: And last year was how much below

1 the prior year?

2 MS. CHASSER: On the first quarter, I don't have
3 that percentage. But for overall year, it was 21 percent.

4 Now, the other point to make is that in terms of
5 our fee collection for the first quarter we were down only
6 7 percent. So that while the filing level, we still have
7 achieved close to the budget projection of the revenues.
8 So that's where we're -- we monitor that level in terms of
9 whether we have the resources.

10 I mean, there's several issues we need to
11 address. The issue of whether the money is there to run
12 the operation, whether there is sufficient work for those
13 that are staffed.

14 MR. ALEXANDER: How does the backlog of a very
15 high year's Section 8 and 15 and renewals and other things
16 impact the filings? Are we getting the benefit of the
17 growth from before in terms of fee income?

18 MS. CHASSER: Well, that's one of the reasons
19 why our fee level is down because of the ITU and the

1 Section 8 and Section 9 filings.

2 MR. ALEXANDER: Let me ask the corporate
3 representatives here, because we had sort of a prescient,
4 if that was the proper term, prediction of the falloff by
5 P&G's counsel who used to be on the advisory committee,
6 indicating that his company's filings had gone way down
7 before we had any real reading of what was happening. How
8 is Shell, Kodak, Chevron filings comparing this year to
9 prior years if you have any feel for it?

10 MR. MULLER: Kim Muller, Shell. Well, I think
11 our filings are going to be way up and we're going to be
12 way up in multiple classes. In other words, we may have
13 the same number of applications, but we will be filing for
14 more classes. We see our businesses infuse these
15 different areas. And the people that I have talked to
16 geographically from Houston also believe that the filings
17 will be --

18 MR. ALEXANDER: Today Texas, tomorrow the world.

19 MR. MULLER: My sense is that the economy is

1 going to recovery slowly. But it really depends on what
2 segment of the economy is going to recover. And if the
3 technology segment recovers faster than the old-line
4 companies, I think you'll see the filings go up higher
5 than you will if the old-line companies recover faster.
6 That's my assessment of it.

7 MR. STIMSON: At Kodak I think our filings will
8 remain the same, but that's because they dropped quite a
9 bit a few years ago for two reasons. One, because we
10 changed our branding philosophy to emphasize the Kodak
11 brand rather than a lot of new subbrands. That was two or
12 three years ago. For financial reasons, we're trying to
13 cut down on filing. So I think -- I don't see it going
14 down further in the coming years. But we're already at a
15 much lower level than we were probably five years ago. I
16 certainly don't see it increasing.

17 MR. ALEXANDER: I think I commented that, even
18 as outside counsel, we see Hewlett-Packard do the same in
19 brand identification rather than proliferation. How about

1 Chevron?

2 MS. KORNIIEWICZ: I think that we're going to see
3 a lot more filing of existent marks in different places.
4 I don't -- you know, just coming out of a merger, there's
5 going to be a lull for us where people sort of regroup.
6 But I think that when period is done, I think there's
7 going to be a great deal more filing.

8 MR. ALEXANDER: When you say "different places,"
9 do you mean different classes or different countries?

10 MS. KORNIIEWICZ: Both, both.

11 MR. ALEXANDER: Anyone else? I didn't mean to
12 exclude anyone. Thank you.

13 MR. CRAWFORD: Thank you. This is just to show
14 you the fee collections and the requirements, the overall
15 fee collections. We'll talk a little bit about the
16 surcharge and the way the surcharge plays out in another
17 slide. I'll come back to it, the \$100 million carryover
18 as well, for you, Mr. Chairman.

19 The Administration proposes a one-year surcharge

1 that would begin in fiscal year 2003. It is part of the
2 President's budget. The overall amount of the size of the
3 surcharge is probably around 17 to 18 percent of the
4 patent piece, which represents probably 85 percent, is a
5 19-percent increase on the statutory fees.

6 On the Trademarks side, it's about 10-percent
7 below the 10 percent. I believe that equates to about a
8 \$15 million increase on the Trademark side just on renewal
9 and Section 8 affidavits fees.

10 This surcharge generates in total about \$207
11 million. The PTO gets about \$45 million of that
12 surcharge. So when Commissioner Chasser was stating that
13 we were getting a hundred percent plus of our basic fees,
14 this is why she can make that statement. Because we got,
15 not only what we would normally have generated, but we got
16 an additional \$45 million.

17 There is 162 million that does not come to the
18 Patent and Trademark Office. And those funds are going to
19 meet presidential priorities, Homeland Security, the

1 economic security, priorities of the Administration.

2 We are looking at a fee realignment, especially
3 on the Patent side. I think on the Trademark side it's
4 still open as to what will happen beyond '03.

5 But on the Patent side, they're very much
6 interested in looking at a fee realignment that supports
7 the goals of the business plan. They want encourage
8 certain behaviors on the part of the applicants. So they
9 will be looking at, I think, fee realignments that will
10 move them in that direction, their critical part of their
11 portion of the business plan.

12 MR. ALEXANDER: Is the 2.7 million for the
13 Patent and Trademark side?

14 MR. CRAWFORD: That's the total.

15 MR. ALEXANDER: So you're talking about a little
16 over 30 million on the Trademark side.

17 MR. CRAWFORD: Actually, it's about 15 -- about
18 15 --

19 MS. CHASSER: Twenty.

1 MR. CRAWFORD: Twenty million.

2 MR. ALEXANDER: Twenty. So less than the pro
3 rata of that 15 percent would be --

4 MR. CRAWFORD: Yeah. It's in that \$20 million
5 range, I think; the \$15, \$20 million range.

6 MR. ALEXANDER: What is the rationale for the
7 surcharge on a self-funding organization? Is it merely
8 that the 9-11 situation that everybody is going to --
9 every government agency is going to attempt to contribute
10 to an economic security?

11 I'm trying to figure out. General taxes support
12 the economic security program, and we're an organization
13 that's not supposed to be paying taxes but is supposed to
14 be self-funding. I'm curious as to the Administration's
15 rationale for a surcharge when we already have diverted
16 funds from what we're paying.

17 Have you been given any theories supporting
18 their position? I realize it's not part --

19 MR. CRAWFORD: The Administration? And this is

1 a public meeting; thank you for the transcript. I
2 recognize that as well.

3 In very practical terms, I think a couple of
4 things happened, Miles, Mr. Chairman.

5 MR. ALEXANDER: Miles is fine.

6 MR. CRAWFORD: One, I really think that the
7 Administration wanted to make a statement in support of
8 the USPTO and sees the continued success of the USPTO to
9 be critical to a long-term economic security of the
10 country. It knew that it had to fund a plan.

11 And to its credit, it said to us, in the early
12 days, tell us what the requirements are; don't worry about
13 money; and then we'll make some decisions about money. I
14 think the first thing is they were attempting to support
15 the PTO. They understand the critical role of the PTO and
16 intellectual property.

17 The second part of the problem that the
18 Administration has is, up until this budget, it is going
19 to be the first budget in about three or four years where

1 there is a deficit. We're back in the red ink. And I
2 think they're trying to meet the requirements of 9-11,
3 post 9-11, do the kinds of things that will help spur the
4 economy, and at the same time, reduce the amount of
5 aggregate red ink. The more the Federal barring in the
6 marketplace, that, also, affects the interest rates that
7 the private sector gets as well.

8 So I think it was a balancing act of trying do
9 those things. But I think, most importantly, what they
10 were trying to do was signal their support for
11 intellectual property. They could have just as easily
12 taken 162 million without a surcharge. And we would have
13 ended up wit \$50-, \$70-, \$80-million increase which would
14 not have given us the resources to entirely improve
15 overall performance.

16 MR. PIRKEY: Clarence, do you have any
17 information on how these numbers, 19.3 and 10.3 percent,
18 are calculated?

19 MR. CRAWFORD: I suspect -- I understand how

1 they were calculated. I think that with the Office of
2 Management and Budget representing the President, they had
3 a number of goals. And I think when they sat down and
4 looked at everything that was in place, funding us and
5 meeting other needs, I believe that's how, in part, that
6 number was derived.

7 MR. STIMSON: Do you envision a discussion by
8 the TPAC on this issue of the surcharge either at this
9 meeting or at a public meeting?

10 MR. ALEXANDER: No, I envision it at a public
11 meeting.

12 MR. STIMSON: Is that now or later?

13 MR. ALEXANDER: I don't know when we're having
14 it. I was thinking of having it probably after Anne spoke
15 to put some perspective on it. But I do envision a public
16 meeting entitling the public to know our questions and
17 views, understanding that the Administration has a certain
18 perspective in which the PTO is obliged to be loyal to it.

19 MR. STIMSON: I just wanted to make sure that,

1 you know, if we're going to talk later. I didn't want my
2 silence to be considered assent.

3 MR. CRAWFORD: Miles, this is the \$100 million.
4 This is one of my favorite slides. It's not necessarily
5 viewed favorably for others around town.

6 If we go to the far right column, what you will
7 see there is what the Office of Management and Budget is
8 giving us is \$100 millions from the prior year. And then
9 you'll see that brings our total resources up to \$1.6
10 billion. And with carryover, what they're, also, doing is
11 they're reducing the carryover into the next year.

12 The effect -- let me say it this way. If you
13 look at the amount of carryover, it is clearly less than
14 what we've had in the past. This just underscores, again,
15 the need for a serious policy debate about the PTO coming
16 to some closure about the PTO and its funding source and
17 how we're funded now and into the future.

18 One of the issues that we have as an agency is
19 in many ways we're like a factory. I don't want that to

1 sound negative. And we're like a factory. And one of the
2 problems we have is not only getting access for funds to
3 do our work, it's also the unpredictability of the
4 funding.

5 We have a good mark this year from the
6 President. But it in no way binds anyone to do anything
7 beyond '03.

8 '04, we start, again, with a blank slate of
9 paper. And we hope that they will, the Administration and
10 the Congress, build on what we have put out there. But
11 there is no commitment. We only do annual budgets. So
12 there's no legal requirement, or they can't really make a
13 legal requirement beyond this current 2003.

14 MR. ALEXANDER: Can you give us a ballpark
15 figure of how many hundreds of millions of dollars of user
16 fees have not been returned to the USPTO to fund its
17 operations over the past years?

18 MR. CRAWFORD: The figure would approach close
19 to the \$800 million range. If you go back to the days of

1 the surcharge in the early '90s and the increment of the
2 funds that haven't been returned, it approaches about
3 probably close to \$800 million over about a 10- to 11-year
4 period.

5 MR. ALEXANDER: You have about \$800 million
6 that's been appropriated from user fees to general
7 treasury purposes over the past decade, you would say.

8 MR. CRAWFORD: That's correct.

9 MR. ALEXANDER: And if you put an interest
10 factor on that, it would probably be a billion and a half.
11 Would that be fair?

12 MR. PRICE: It's a full year's budget for the
13 PTO.

14 MR. ALEXANDER: I wasn't trying to --

15 MR. CRAWFORD. I understand. I understand.

16 MR. ALEXANDER: I did not use "misappropriate."
17 I just said how much had been appropriated.

18 MR. CRAWFORD: The President and the Congress
19 are the ones that set the national priorities. And they

1 will argue that that's what they've been doing over the
2 years.

3 I think that the key -- this is just a list of
4 challenges that we face, and Anne touched upon them. And
5 we'll come back to them a little bit later in the day.

6 I think the chief issues, the first two, really
7 affect the whole organization but probably more Trademarks
8 than Patents. We're concerned about Patents and the
9 economy, but it appears that Trademarks are probably more
10 affected and more immediately affected by swings in the
11 economy.

12 That's a major unknown. If we could figure that
13 one out, we could probably all go make even more money in
14 other occupations if we could anticipate what the economy
15 would do.

16 The one piece on the legislation that's an
17 unknown that affects Trademarks in particular is what
18 happens if Madrid Protocol is enacted. There's an
19 additional funding requirement that we would have to

1 address if that were to happen. I guess you can speculate
2 on the standing of whether that will happen.

3 And as I mentioned before, the issue with our
4 concern just from an overall financial standpoint is the
5 ability to adequately predict and have some degree of
6 certainty of what our funding level is from one year to
7 the next. It makes Anne's job a heck of a lot easier.

8 And the last item there is the Carlyle. We have
9 one more piece of litigation right now that we're working
10 through.

11 Construction is underway. I've not been down
12 there. I'm going to go down there shortly. I understand
13 we have 200 large dump trucks a day that are carrying dirt
14 away. So we're starting to dig a very nice hole. We hope
15 to fill it with a building.

16 We're working now. We have a very good team
17 working on this project. We're working with the
18 contractors on finalizing some of the design. The first
19 of the buildings will come online at the end of calendar

1 year '03, first of '04.

2 We're working with the Turner Construction
3 Company on a schedule. There are penalties in that
4 contract if Turner fails to meet the schedule. So we put
5 a number of things in there like that. But we're now at
6 the point of finalizing some of the plans. And we'll have
7 that probably in the next month or so when the Government
8 can accept those schedules.

9 Let's go to the next slide. I'm sorry. What?

10 MR. STIMSON: When would the Trademark
11 Operations move if the first buildings open at end of '03?

12 MR. CRAWFORD: The schedule -- if you can
13 visualize our project, we're in more or less a horseshoe.
14 The Trademark building would be our center piece
15 building. That probably comes on line about a year or so
16 after the initial building. So we're looking at in the
17 end of '04, first of '05. I can get that and let you
18 know. But it's about a year after the start.

19 We found, working with the contractors, that if

1 they can work in sort of a horseshoe, when they bring the
2 heavy equipment up for construction, they just move it
3 from one building to the next rather than take it away and
4 bring it back. It's more economical to sort of work in a
5 horseshoe around. And that's what we we're trying to do.

6 MR. STIMSON: And when would the move be
7 completed?

8 MR. CRAWFORD: About 18 months from the
9 occupancy of the first building until the last.

10 MR. NICHOLSON: Clarence, you mentioned there's
11 a litigation pending that you're working on. Is that
12 likely to impact the schedule in any way?

13 MR. CRAWFORD: Only if we lose. I think we're
14 in good shape.

15 Again, it's the issues that are being raised are
16 largely being raised by our current landlord who was an
17 unsuccessful offeror in the contract. And what they would
18 like to be able to do is stop the Government from
19 providing design plans for the contractor. They'd like to

1 stop the construction.

2 MR. TOUPIN: Jim Toupin.

3 MR. CRAWFORD: Our General Counsel.

4 MR. TOUPIN: They sought a preliminary
5 injunction in the Court of Federal Claims. There's due to
6 be hearing on that in March.

7 MR. CRAWFORD: Just a snapshot here on how we
8 fair.

9 This is our self-assessment. I think our Under
10 Secretary stated -- I have to fully agree -- that this is
11 probably one of the better managed of the Federal
12 agencies.

13 On the human capital side, we understand that
14 our workforce plan was approved by OMB and was held out as
15 being somewhat of a model.

16 We have a couple of issues we need to look at
17 and we're going to look at over the course of the year.
18 And that's sort of the structure of the nonexamination
19 components of our organization, making sure that it's flat

1 as possible, making sure that we're shifting as many of
2 our resources into direct examination and direct service
3 to the customer.

4 So that's going to be ongoing for the year.

5 MR. ALEXANDER: What do the colors indicate?

6 MR. CRAWFORD: The colors indicate yellow. The
7 red means that there is a problem, as I've mentioned. OMB
8 changed the standard on all of the agencies instead of 50
9 percent. So we have a red there.

10 It's not clear -- I think it's an important
11 thing to do. I'm not sure that there's necessarily a
12 penalty.

13 The yellow is the caution where we still have
14 some issues to work through. We have actions underway
15 there. I don't see that as a problem in the financial
16 management.

17 As Anne says, with the clean opinions, our work
18 in activity based costing, we're in good shape there. We
19 just need to keep up the good work.

1 On e-Government, it's mainly starting to deliver
2 on the Patents and the Trademarks initiatives. With that
3 we expect that to go to green as well.

4 And then the Budget and Performance Integration,
5 we're one of the few agencies that have truly integrated
6 performance and budget data. So we're in good shape there
7 as well. We have not been cited or had any conversations
8 with OMB.

9 MR. MULLER: Clarence, for the new people, could
10 you tell us what R, Y, and G stand for?

11 MR. CRAWFORD: I don't know that.

12 MS. CHASSER: Y is yellow.

13 MR. CRAWFORD: Yellow -- I'm sorry. Yellow.
14 Red, the R stands for red.

15 MR. MULLER: Oh, I see.

16 MR. CRAWFORD: This is not colored that is on
17 the screen now. I apologize.

18 MR. ALEXANDER: It's also for the old people.

19 MS. CHASSER: Red is bad. Okay. Green is good.

1 MR. ORESKY: This is our own assessment or our
2 OMB assessment.

3 MR. CRAWFORD: Our own assessment. We've shared
4 it with OMB and with the commerce department. And we
5 haven't received any push back. They're generally
6 satisfied with the overall management of the agency.
7 They're focused, though, on us delivering on the goals in
8 the business plan and, on the Trademark side, the
9 e-Government component and to try to also improve
10 productivity.

11 MR. ORESKY: But this represents the composite
12 for the whole Patent and Trademarks.

13 MR. CRAWFORD: Yes, that's correct.

14 MS. KANE: I'm sure ours would be better.

15 MR. CRAWFORD: I'm sure it would be. Don't tell
16 my friends on the other side. Yes, I think you're right.
17 Thank you very much.

18 MR. ALEXANDER: Thank you, Clarence. If it's
19 all right with everybody, I think everyone has had enough

1 coffee to take a ten-minute break, and we'll recommence.

2 (Brief break.)

3 MR. ALEXANDER: I think almost everybody is off
4 the phone, including me. So why don't we commence. And
5 Judge Sams is going to share with us some insights of the
6 TTAB.

7 JUDGE SAMS: Thank you, Miles. I'm usually the
8 last person on the agenda with 15 minutes to speak. I've
9 noticed the revised agenda puts me well up the list and
10 with an hour. I don't know whether to be gratified or
11 alarmed by that. But I can assure you all that I will not
12 take an hour.

13 MR. ALEXANDER: Well, the good thing is that you
14 started a half-hour late.

15 JUDGE SAMS: I assumed not.

16 Actually, in summary fashion, I can say that the
17 report from TTAB remains, on the whole, quite good. Let
18 me have the first slide.

19 The first slide shows our goals, first of all,

1 for fiscal year 2002. And our aim is to decide all cases
2 that are ready for final decision in 12 week and decide
3 all motions, including motions for summary judgments,
4 within 12 weeks.

5 As I reported at the last meeting of this
6 committee, the TTAB has made some remarkable progress in
7 reducing the time it takes to make final decisions and
8 decide motions. And the news on the productivity and
9 pendency thus far this fiscal year remains good.

10 As this next slide shows, the pendency for final
11 TTAB Decisions, that is the number of weeks it takes us to
12 cite a case once it becomes ready for final decision,
13 either by input on brief or by having a hearing, dropped
14 steadily over the least two years.

15 And as of the end of December 2001, pendency
16 remained below goal at 11.5 weeks. It is slightly higher
17 than it was in September of '01, contributed to sort of
18 end-of-the-year leave that is taken around the holiday
19 time and use-it-or-lose-it kind of leave that we have.

1 Particularly with the senior people we have, they tend to
2 have a lot of it.

3 Next slide. We saw similar results in the
4 decisions on motions for summary judgment. Over the last
5 year, the pendency for summary judgment motions dropped
6 from 15 weeks to 14 weeks. And at the end of December
7 2001, the Board was deciding summary judgment motions in
8 an average of 14.8 weeks from the time they were fully
9 briefed and ready to decide.

10 MR. ALEXANDER: Out of curiosity, two questions.

11 One, when you have a 14-week average, what is the range
12 within what? What is the longest? What is the shortest,
13 I guess, basically to get at that average? And is it
14 average based on the number of cases, or is there some
15 other method?

16 JUDGE SAMS: Well, we take the average of all
17 the decisions that were issued during the particular month
18 time period and then take an average. The average would
19 be the highest number in that 14.8 weeks. I'm not quite

1 sure. Maybe Mary France Bruce could answer.

2 MS. BRUCE: I don't know that I can say exactly
3 what the highest number is. I will tell you this is
4 skewed by the fact that every once in a while an old case
5 gets discovered on the shelf and is brought to me for
6 assignment so it was sitting a little longer than it
7 should have. So, really, the average is not terribly far
8 off what most cases on the shelf are at this time.

9 JUDGE SAMS: So that if we took a median, it
10 would probably give close to the same --

11 MS. BRUCE: Yes.

12 JUDGE SAMS: -- KF 14.8.

13 MR. ALEXANDER: So this is the average times for
14 those cases decided during a given period.

15 JUDGE SAMS: Right.

16 MR. ALEXANDER: Now, I don't suggest that this
17 is the case. But if there were a hundred cases that were
18 over a year old or being decided, they would incline to be
19 the average.

1 JUDGE SAMS: That's correct. But there are no
2 such pendency, such old cases. As I said, we sometimes
3 find an older one that for some reasons has just surfaced.
4 But that doesn't happen very often.

5 MR. ALEXANDER: Is there a docket like Federal
6 court has, how many cases are over six-months old and over
7 a year old? Do you have any information along those
8 lines?

9 JUDGE SAMS: We do have a report. I don't have
10 that report with me. But we have very few that are beyond
11 --

12 MR. ALEXANDER: Aberrational.

13 JUDGE SAMS: Aberrational. Yes. Very few. As
14 a matter of fact, we have very few total cases pending.
15 There probably are fewer than a couple of dozen that are
16 pending at the moment.

17 MR. ALEXANDER: Is the drastic reduction due to
18 the reduction of the number of cases that are being filed?
19 Or the dropping from 78 to 14, is that a pretty drastic

1 drop?

2 JUDGE SAMS: Right.

3 MR. ALEXANDER: And what is that attributable
4 to?

5 JUDGE SAMS: It is attributable, first of all,
6 to an increase in staffing. And we were allotted more
7 staff (inaudible). We now have essentially doubled the
8 staff over the course of about three years to 16 of
9 interlocutory motions attorneys who are handling these.

10 We, also, made a concerted effort to get rid of
11 the backlog. And that included not only assigning those
12 cases to interlocutory motions attorneys but assigning
13 them, also, to judges to get the backlog worked off. With
14 the combination of factors, then, we were able to bring it
15 down.

16 MR. STIMSON: It's true that in years of
17 imploring people not to file summary judgements --

18 JUDGE SAMS: I hesitated to mention that, but
19 that's absolutely so. And we do have fewer being filed

1 than were historically filed.

2 The next slide shows our projected filings. As
3 you can see in fiscal year 2001, that's the second column
4 on the chart, our overall receipts 8,526 cases. This is
5 all sorts of cases, not only oppositions and
6 cancellations, but appeals as well.

7 That's a drop of about 8.6 percent from the
8 9,261 filings of fiscal year 2000. But our projection
9 model shows a rebound in filings over the next three
10 years.

11 And let me reiterate what I said at the last
12 meeting of why we think that's so. Our projections of
13 oppositions are based on trademarks projections of the
14 number of cases that they expect to publish for opposition
15 over the next few years. And for those fiscal years '02,
16 '03, '04, Trademarks is still officially projecting
17 increases, yearly increases, in cases published for
18 opposition.

19 Our projections for ex parte appeals are derived

1 from recent years appeals files and Trademarks's
2 projections and new applications filed.

3 As Clarence's staffing and workload slide
4 showed, Trademarks, at least for now, is projecting that
5 application filings will be flat in 2002 and increase at a
6 rate of 10 percent for years thereafter. And when we
7 apply all of those figures to our own workload models, we
8 see an upward movement.

9 Now, obviously, if Trademarks adjusts its
10 projections, which may well happen, we will have to assess
11 the impact on TTAB and on its resource requirements for
12 keeping our goals, that 12 weeks as you saw in the first
13 slide.

14 MR. ALEXANDER: Has there been any impact of
15 significance based upon dilution of grounds for opposition
16 and cancellation?

17 JUDGE SAMS: We haven't been able to detect that
18 there have been any increase based on dissolution.

19 From a purely observational point of view, I can

1 say that almost all of the cases in which dilution is pled
2 as a ground for opposition, in almost all of those cases
3 likelihood of confusion is also pleaded. So it is very
4 rarely a separately pleaded ground.

5 And so I don't think we have a significant
6 number of cases attributable solely to the dilution
7 jurisdiction that we have.

8 MR. ALEXANDER: Do you find that the dilution
9 claims that are filed -- and going back to a talk that
10 Ellen gave at AIPLA -- indicating that, at least to me,
11 that some of the dilution counts bordered on what might be
12 Rule 11 charges in Federal court? Are you finding that
13 there are some specious dilution claims that we have to
14 deal with?

15 JUDGE SAMS: The information which you're
16 alluding to was some information I put together early on
17 after we first got our dilution jurisdiction to see what
18 kinds of cases were being filed. And I put together a
19 list of the marks that were being pleaded as famous and

1 marks against which they were challenging.

2 MR. ALEXANDER: I think there were some 1,700
3 dilution cases the first year and a half.

4 JUDGE SAMS: There were. There were something
5 like that.

6 I can only say that not very many have come to a
7 final decision. So it's hard to say whether or not -- nor
8 on motion for summary judgment nor even on a motion to
9 strike. So we don't have any, let's say, determinations
10 about any of them being frivolous in nature.

11 I'll have to concede that one of the reasons I
12 put the list together and talked about was that it was
13 curious to me that there were some marks being pleaded
14 that didn't, at least on the face of them, seem to be very
15 famous.

16 But we have very few cases, as I say, that have
17 gone all the way to the final decision; although, we did
18 just issue a decision in December.

19 As I mentioned, also, in our last meeting, in

1 fiscal year 2001, the TTAB, like the Trademark examining
2 operation, saw a drop in total filings as compare to
3 fiscal year 2002.

4 As you can see from this chart, the Board
5 received 4,038 oppositions, 1,437 cancellations, 3,046 new
6 ex parte appeals, and 5 -- only 5 -- current-use
7 proceedings. Those numbers represented a drop from the
8 previous fiscal year, 2000, of 24 percent in opposition
9 and 8.5 percent in cancellations. Interestingly, a 14
10 percent increase in ex parte appeals over the proceeding
11 year.

12 Now, let's see what's happening this year.

13 The next slide shows filings for the first
14 quarter of the current fiscal year in red as compared to
15 the first quarter of last fiscal year in blue. As you
16 see, opposition and cancellation filings of up, while ex
17 parte appeal filings are down and extensions of times to
18 oppose are likewise fairly sharply.

19 Now, this reflects a good many applications that

1 were published for opposition in the last few months. And
 2 it, also, reflects, in the ex parte context, probably at
 3 least a fall in the overall number of applications that
 4 have been filed.

5 MR. ALEXANDER: Were any of these affected by
 6 mail problems?

7 JUDGE SAMS: Not to our knowledge; not to our
 8 knowledge.

9 Before I want to open the floor to questions,
 10 let me say a few words about e-Government at the TTAB.

11 I'll give you more about our progress on the
 12 TTABIS set in a moment.

13 But, first, I want to report just very briefly
 14 on our work-at-home pilot, which is going very well. We
 15 now had up to -- we had seven judges, four staff
 16 attorneys, and two paralegal who are participating. Our
 17 current plans, although it may be adjusted depending on
 18 what kind of hiring, if any, we do, would be to expand to
 19 27 participants in FY '03.

1 I remind you that our adversary proceeding
2 index, which we call BISX, or the Board Information System
3 Index, is now on our TTAB web page. This data base gives
4 status and a good deal of other information on current and
5 terminated proceedings. And we're still online with our
6 plans in FY '02 to expand the office's electronic filing
7 capability to permit the electronic filing of notices of
8 opposition, petitions to cancel, and extension of time to
9 oppose.

10 MR. ALEXANDER: Is any of the work at home
11 remote from Washington?

12 JUDGE SAMS: No. All of our people are in the
13 Washington, D.C., Metropolitan Area.

14 Finally, the TTABIS, as I think this group
15 probably know, is the Board's new electronic workflow
16 system. As I reported at our last meeting, TTABIS allows
17 complete electronic processing of files. All new papers
18 are electronically scanned and entered into the
19 appropriate electronic file and moved electronically from

1 desktop to desktop for processing.

2 This new system allows to us capture incoming
3 papers at the time of delivery. It effectively eliminates
4 lost and mismatched papers, which has been the bane of our
5 existence for too many years, and minimizes file movement.

6 And we hope it will eventually allow public electronic
7 access to all TTAB files in the fairly new future.

8 In July of last year, we began a pilot which
9 included 25 percent of our staff of legal assistants,
10 paralegal, and interlocutory attorneys. We added a second
11 pilot team and two judges to the TTABS pilot in December
12 of 2001. That means that TTABIS is now being used by 50
13 percent of our support staff and by two judges and eight
14 interlocutory attorneys.

15 One last e-Government-related comment. Just
16 last month, for the first time ever, the TTAB held three
17 oral hearings by video conference, using video conference
18 communications facilities and links between the PTO's
19 video conferencing facility here in Arlington and the

1 video conference facilities at the Patent and Trademark
2 Depository Libraries in Detroit, Michigan; and Sunnyvale,
3 California.

4 Three different panels conducted final hearings,
5 two ex parte cases and one interparty case.

6 This option -- I should say the reports were
7 very good and everyone who participated believed that it
8 went very smoothly and without a hitch.

9 Obviously, this option for oral hearings is
10 somewhat limited in that we still have only three links
11 between the PTO the three Patent and Trademark Depository
12 Library facilities that have these video conference
13 connections with the PTO.

14 Nonetheless, I think it represents, at least, a
15 first tentative step in the direction of the electronic
16 courtroom.

17 MR. ALEXANDER: Is there any reason why private
18 electronic -- not electronic -- but private video cannot
19 be used?

1 JUDGE SAMS: I just don't think we're set up for
2 it. I don't really have the technical explanation for
3 that. It's my understanding that there are some
4 limitations.

5 MR. PRICE: That would enormously expand the
6 ability to conduct hearings online.

7 JUDGE SAMS: Yes. And we will be following up
8 on that.

9 MR. MULLER: In interparty case, were the
10 attorneys in the same place or were they remote?

11 JUDGE SAMS: One was here in Washington, or in
12 Arlington, with the Panel; and the other was remote.

13 There has been some reluctance among some
14 practitioners to engage in that kind of set up because
15 they're afraid they'll be at a disadvantage if they're not
16 in the room with the Board judges. We try to assure
17 people that is not so. We keep our distance even from the
18 people who are with us, even though it's not physical
19 distance.

1 MS. KANE: Isn't it more of a feeling for the
2 reaction of the Board to certain things that the person
3 out of the room may not get compared with the person in
4 that's in the room? I don't think you would be biased one
5 way or the other.

6 JUDGE SAMS: I suppose there are some concerns.
7 As I understand the way that the hearings were held --
8 and I was not one of the judges on these panels. But my
9 understanding was that the camera was set on the Board for
10 the most part so that the people at the remote location
11 could see the Board's reactions to what was being said.
12 But there was a camera that was occasionally on the
13 litigant's counsel.

14 Now, I'm ready for questions.

15 MR. MULLER: One of the things I find missing
16 here from the last time I was on the Public Advisory
17 Committee is the resolution of motions over the telephone.
18 Did that turn into a actual program, and what's been the
19 success of that?

1 JUDGE SAMS: Yes. Back in 1999 -- well, first
2 of all, the program you're referring to was a pilot
3 program in 1998 with three interlocutory motions attorneys
4 doing more telephone conferences with litigant's attorneys
5 than we had traditionally been willing to do then.

6 In the year 1999, after the program had been
7 going for about a year, we had those three interlocutory
8 attorneys give us a report on how they thought the program
9 went so that we could make a decision about expanding it.

10 They had a very positive report. They found the program
11 to be somewhat underutilized, though. But in those cases
12 where it was utilized, it was very helpful, both to them
13 and to the litigants.

14 Therefore, in June of 2000, we published an OG
15 Announcement in which we expanded the program to the
16 entire interlocutory staff, and for that matter the
17 judges, anyone on the Board who was in a position to hold
18 a hearing; telephone conference, that is. And I believe
19 that it's a very successful program.

1 We are still getting the word out that it
2 exists. I don't know that everyone is comfortable using
3 it yet, both inside and outside the office. But everybody
4 is learning.

5 I think, generally speaking, the litigants are
6 happy to have it. They can get things done faster. Our
7 interlocutory attorneys are happy to have it because they
8 don't have to consider so much paper. As a matter of
9 fact, as the interlocutory staff is becoming more familiar
10 with the process themselves, they are instigating more
11 telephone conferences themselves when they see that
12 something is either getting out of control or off track to
13 try get to it back on track.

14 So, yes, I think it's a very successful program.
15 We still are holding out a lot of hope to expand it even
16 further once the word gets out.

17 MS. KANE: Is this an appropriate time to talk
18 about a couple of the policy issues that are in the
19 briefing papers?

1 MR. ALEXANDER: I think it is.

2 MS. KANE: I have a comment. One of the
3 suggestions, I guess, you're thinking about is taking a
4 less liberal approach to granting extensions of
5 discovering and trial dates. So I just have a comment on
6 that if you want to hear it. I don't know whether you do.

7 JUDGE SAMS: Sure.

8 MS. KANE: I think one of the benefits of the
9 PTO practice and the opposition proceedings is in the
10 flexibility of the time schedule that permits some
11 settlements to be achieved that might not be achieved if
12 you were just saying, you know, the time is up and you
13 cannot extend it. I think people sometimes go to the PTO
14 with that in mind because they don't want to be under the
15 gun of what the district court might impose.

16 And I don't know why you would want to -- what's
17 the theory of being less liberal for those kinds of
18 things?

19 JUDGE SAMS: I think that the theory was to

1 avoid abuse of the settlement acts suggested that were
2 existing in our practice and causing long delays in
3 getting through cases.

4 Now, a couple of years ago, as you are aware, we
5 published some new rules. And in conjunction with that,
6 promulgation of the rules indicated that we were going to
7 be a little tighter on granting extensions and,
8 particularly, contested extensions. We have been.

9 MS. KANE: Right. Well, I can --

10 JUDGE SAMS: And I assume that that's not what
11 you're commenting on.

12 MS. KANE: I'm not talking about contested
13 extensions. I'm talking about where the parties agree.
14 So if they want to take that time.

15 JUDGE SAMS: And I believe that that's still the
16 operating principle.

17 MR. STIMSON: David, I have a question on your
18 third-to-last slide, which is the first-quarter filings
19 comparing fiscal year '01 and '02.

1 You and I talked about this a little bit before
2 the meeting about the relationship between the filing
3 volume and the volume in the TTAB. And some of it is the
4 delay that, I think you said, generally, the TTAB was
5 about a year or so lag behind filings. And that may be
6 the answer to my question.

7 But I'm just curious. If you look at a number
8 of these measurements, oppositions, cancellations, and,
9 specifically, extensions of time to oppose, they've gone
10 up from '02 to '01. And yet the filings continue to go
11 down. Is that discrepancy because of the lag time and
12 these are based on the (inaudible) because, especially,
13 extensions of time imposed I think would be closer in days
14 to the applications>

15 JUDGE SAMS: Yeah. The short answer is yes. A
16 little more complicated answer is there was a period, and
17 I'm not sure whether it's still going on or not. Somebody
18 else can fill me in on that.

19 But there was period in which the contractor was

1 pushing through a lot of cases for publication that have
2 been in the backlog and from prior years. And those were
3 published at rates greater than we had seen theretofore;
4 and that is reflected both in the opposition filings and
5 in the extensions of time.

6 Whether that will continue, I'm not quite sure.

7 My suspicion is that it won't at those levels because I
8 think the OGs are coming down in size somewhat. But I
9 don't know for sure.

10 Yeah. That's the explanation there. And as I
11 mentioned, the explanation, the only one that I can
12 speculate about on the appeals, is that we're finally
13 beginning to see a coming down of appeals because of the
14 falloff in application filings during the last fiscal
15 year.

16 MR. STIMSON: And we've heard about the 20-some-
17 percent drop in applications last year and so far in the
18 first quarter this year. Have you done any projections
19 for your anticipated volume of oppositions in the next

1 year or two?

2 JUDGE SAMS: Well, we're right now still using
3 the official numbers that we're getting from the Trademark
4 operation. I expect those to be adjusted. And we will
5 have to adjust those.

6 MR. STIMSON: Does anybody expect to adjust it?

7 JUDGE SAMS: I would expect so. We'll have to
8 see what the filings actually are, but I would suspect so.

9 One point I would like to make, though, is, as
10 you see all of this work coming in, the oppositions and
11 cancellations, even though filings may be off, it's going
12 to take a while to work these things through the systems.
13 There are going to be motions filed and decisions to make
14 with respect to those. So our resource requirements won't
15 fall off dramatically for a while.

16 MR. TOUPIN: I can help out. We did a
17 comparison to what happened at the TTAB last time there
18 was a fall in filings in the examining operations.

19 MR. STIMSON: When was that done?

1 MR. TOUPIN: Early '90s, I believe.

2 MS. CHASSER: There was only a three-percent
3 drop.

4 MR. TOUPIN: Yeah, it was a much smaller drop.
5 But because, precisely, you had this mix of opposition and
6 appeal proceedings, which had somewhat different patterns
7 -- although, appeals, I think, fell one year; oppositions
8 rose in that year --there was never a fall off at the
9 TTAB.

10 So as Anne points out, this may prove to be a
11 more dramatic decline. But nevertheless, the likely
12 effect of the TTAB probably won't be at the same rate.

13 MR. STIMSON: So you're not saying, okay, in a
14 year we're going to see a 20-percent drop because that
15 wave is going to hit us.

16 JUDGE SAMS: No would be the short answer to
17 that. I'm not saying that. And I think it would be
18 unlikely, given our past history, to say that.

19 MR. STIMSON: So it's not a direct correlation.

1 JUDGE SAMS: Obviously, all of our workloads
2 ultimately depend on the number of applications filed.
3 But there are other complicating factors, including some
4 that -- purely anecdotal, but that I've been told by those
5 who litigate before the Board that in tough times
6 sometimes more options are filed because there's an
7 anxiety about protecting the marks one has. And so that
8 there may not be a one-for-one falloff based on
9 application filings.

10 MR. ALEXANDER: Or maybe even for aberrational
11 reasons. Joe, did you have a question?

12 MR. NICHOLSON: He answered that. Thank you.

13 MR. ALEXANDER: I would chime in with the
14 comment about not forcing two large corporations which
15 aren't ready to try something to go forward. I think
16 that's been counter-productive in Federal court. I
17 applaud the concept of not granting extensions where one
18 side is trying to put something off and the other side is
19 ready to go.

1 In the materials forwarded to us, there are key
2 vacancies in the unit section which says, "The TTAB has an
3 authorized FTE level of 97. But because of budget
4 constraints, it now has a staff of only 82. Key vacancies
5 to be filed over the next two years are five
6 administrative trademark judge positions and four staff
7 attorney positions. Other vacancies to be filed includes
8 management support positions."

9 My question is, if the falloff that is
10 anticipated and presently exists remains, would those
11 positions remain vacant in your opinion?

12 JUDGE SAMS: They well might remain vacant.
13 Now, if we have the funding to hire them and we believe
14 that they're necessary to maintain our pendency goals,
15 then we would, of course, go forward. To the extent that
16 we don't need them, obviously, we won't hire them.

17 And I should point out, too, that, even if we
18 should need to increase staff in the short run and then
19 later on there's a falloff in work, one of the things that

1 goes into the balance, also, is we now have seven
2 administrative trademark judges who are eligible for
3 retirement in the next five years so that we could deal
4 with the requirements of staffing to some extent by
5 attritions as well.

6 MR. ALEXANDER: I should know this, but I don't.
7 If somebody retires, is it comparable to the Federal
8 bench where they can continue to serve in a senior status;
9 or do they retire and completely drop out?

10 JUDGE SAMS: They retire and drop out entirely,
11 unless there is a rare situation where they are hired back
12 as consultants and rehired anew. But that would not
13 probably happened under this scenario given the workloads.

14 MR. ALEXANDER: There's an issue statement which
15 we all have posed which was: "Should the USPTO pose a fee
16 schedule that would allow TTAB to recover the full costs
17 of its operations. Fees collected for the TTAB service
18 recovered 19 percent of the full cost of operations of
19 fiscal 2001."

1 I'm assuming that 19 percent is TTAB fees. But,
2 in fact, the user fees fund the TTAB so that it is not
3 general government funds that go into TTAB but rather
4 USPTO user fees that finance the other 81 percent. Is
5 that a fair statement?

6 JUDGE SAMS: That is.

7 MR. ALEXANDER: Is there any reason to increase
8 TTAB fees if you see, in light of the fact they're already
9 fully funded by user fees, as part of the process?

10 JUDGE SAMS: Well, I suppose in a way we just
11 wanted the input of this committee on whether or not that
12 is an acceptable method of approach to funding the TTAB
13 whether or not fees that are paid for non-TTAB items
14 should continue at that rate to fund TTAB. And that's the
15 issue.

16 MR. ALEXANDER: An interesting question.

17 MR. STIMSON: Is my math correct that that would
18 mean a five-fold increase in TTAB fees? Does that work
19 that way?

1 JUDGE SAMS: I have not done the math myself.

2 MR. ALEXANDER: A little more than five.

3 MR. STIMSON: Yeah, it's a little more than 5
4 times, I mean, if it's recovering 19 percent now.

5 MS. CHASSER: I think the question was posed to
6 the members to get feedback from the user community as to
7 whether the user community continues to believe that the
8 users of the system should support TTAB rather than those
9 that are filing the opposition and no question about what
10 proportion and so forth but conceptually.

11 The way the funding is structured currently,
12 it's the applicants that are supporting, the general users
13 are supporting, the opposition process. And it's just a
14 philosophical question to get a read from the user
15 community.

16 MS. KANE: So a philosophical answer.

17 MS. CHASSER: Well, we spent a lot of time --

18 MS. KANE: No, no. Very briefly. It seems to
19 me that the whole PTO structure here is for the

1 applications. I mean some of them may file oppositions,
2 but they have the ability to do it. And so you file an
3 application to protect your mark. And part of protecting
4 your mark may be to oppose somebody else's. And I think
5 it's reasonable to use those user applications fees to
6 authorize that.

7 MR. PIRKEY: I agree with that. Do we know what
8 percentages of the Federal courts are funded by Federal
9 court fees?

10 MR. ALEXANDER: The minimum, I would expect.

11 MS. CHASSER: Right.

12 MR. PIRKEY: I would think that would be true,
13 also. So I would think this 19 percent would be
14 relatively high compared to what we would expect.

15 MR. PRICE: Yes. And I would suggest that
16 changing this fee structure in the TTAB might have
17 dramatic and perhaps unintended consequences on the
18 balance of opposition or cancellation petitions filed in
19 the TTAB as opposed to actions filed from Federal court.

1 It seems my initial reaction is to think that
2 the present structure is appropriate.

3 MR. ALEXANDER: My view is much the same. It
4 would be prohibitively expensive, I think, to engage in
5 TTAB proceedings that you have to fully fund by those
6 engaged in it. There is the argument that somebody that
7 never uses it could have a reduced application fee. But
8 we all know this is sort of like a marriage in which mine
9 is mine and what's yours is mine type of concept that is
10 not going to decrease -- the Government is not going to
11 decrease the application fees if you increase the TTAB
12 fees in my mind. I've never seen the Government decrease
13 fees. So we're really sort of shooting ourselves in the
14 foot.

15 MS. CHASSER: I just wanted to point out --

16 MS. BERESFORD: We have decreased fees in the
17 past.

18 MR. ALEXANDER: We have?

19 MS. CHASSER: Yes, we have. I would like to

1 point out that the question wasn't all or nothing. It was
2 to more fully support, not all or nothing. And I think
3 the conversation seems like it's going to whether it's
4 either all or nothing. And that was not the intent of the
5 question. Is that clear?

6 MR. ALEXANDER: Yes.

7 MR. STIMSON: That was going to be my point. I
8 think if the time came when there was a real financial
9 crunch, I think we should consider the possibility of
10 looking at users of the TTAB paying more of the weight as
11 opposed to having, cutting, services elsewhere. Something
12 like that.

13 The impression I get now is that things are
14 working pretty well now. But I don't think this Committee
15 is going on record saying that the 19 percent ought to
16 stay where it is. There ought to be some subsidy. But I
17 would keep open the option, if needs change in the future,
18 of changing that mix.

19 MR. ALEXANDER: I read this. I understand it

1 was a question being put to us from the Office. I think
2 we've got sort of the input. And, Lynne, for my
3 edification, when was the aberrational decrease?

4 MS. BERESFORD: We decreased fees in the '80s.
5 I think we went from like --

6 MS. STROHECKER: We went from 35.

7 MS. BERESFORD: Yeah, we went from like 375 to
8 -- 350 down to 275. And that's based on the fact on
9 income and things of that nature.

10 MR. ALEXANDER: So that was about 15 years ago.

11 MS. STROHECKER: What you have to keep in mind
12 is that we have to set our fee schedule and are told to
13 recover the expected cost or budget that we have for the
14 year. So it wouldn't be a net increase to the amount of
15 revenue that PTO would expect to collect.

16 In other words, the question is more
17 appropriately stated: Should the fee schedule be set in
18 such a way as to more fully recover the cost of services
19 being provided?

1 If you look at it from that perspective, then
2 the question that Anne had asked previously, should
3 applicants be subsidized to the extent that they currently
4 are, operations that are performed by the Board.

5 MR. ALEXANDER: A fair statement. Anything else
6 on the TTAB before we move on to our last morning agenda
7 item? Yes.

8 MS. KANE: I just want to note agreement with
9 what David had to say. It's the opportunity where if the
10 crisis arose you'd want to think about it.

11 MR. ALEXANDER: Thank you very much, Judge Sams.

12 MS. CHASSER: The plan was to go over some of
13 the basic -- oh, excuse me. Before I start, you'll see
14 Bob Anderson's name up there. Bob Anderson is not with us
15 today because he's in Boston with a brand new grandchild.
16 So I'm sure you can all appreciate that, and so I'm
17 stepping in in his stead.

18 MR. ALEXANDER: Convey our congratulations to
19 him.

1 MS. CHASSER: Let the record note.

2 Now, I'm going to give you basic workload issues
3 in the Trademark operation. And then we have a series of
4 questions that we want to pose to the Advisory Committee.

5 And you've all had the opportunity to review those
6 position papers and have had time to think about the
7 questions that we will be posing.

8 The applications, as we have mentioned
9 throughout the morning, are currently 23-percent below our
10 plan for the first quarter. However, our fee collection
11 is about 7.5-percent below our planned revenue. We will
12 continue to monitor our new case inventory, and we will be
13 adjusting the number of examiners that are on detail to
14 maintain our pendency within our goal of the three-month
15 pendency.

16 I'm not going to read the numbers to you. But
17 you can see where we are compared to 2002. You might note
18 that examiners first action in fiscal '01, 464,000 plus,
19 is the highest level of first action ever to go out of

1 this office. And that's because last year we had the
2 opportunity to completely work down our backlog by the end
3 of the fiscal year.

4 So we have an awful lot of cases currently in
5 the inventory in the office. So while our first action
6 numbers, our applications, are down by 21 percent, we
7 still have a tremendous amount of work in the system for
8 amendments, especially in the amendment work. So what
9 we're doing is seeing a shifting of our priorities from
10 first action to following up on the (inaudible).

11 Again, our pendency to first action, you'll note
12 that at the end of last fiscal year that we saw 2.7 a
13 month first action pendency, which is the lowest in 13
14 years in this office.

15 Now, the question is asked about last year. At
16 the end of the year, we saw a 2.7 which is below our
17 stated goal of three-month pendency.

18 Under the current system of examination and the
19 fact that we are only receiving 29 percent of our

1 applications electronically, in order for the system to
2 work efficiently, we have to maintain about a three-month
3 pendency. And that has to do with the workflow.

4 Our goal in 2003 is to redo that by one month.
5 And that's with the expectation that we would have
6 80-percent electronic filings.

7 So right now our goal this year is to maintain a
8 three-month pendency. And that, as you know, is within
9 the three-month range. So this year will be anywhere
10 throughout the year from 3 to 3.9 months. And we will end
11 the year at the three-month level or perhaps a little bit
12 below that.

13 MR. STIMSON: What are the workflow realities if
14 you couldn't get the pendency down below three months?

15 MS. CHASSER: What? I didn't hear you.

16 MR. STIMSON: I thought I understood you to say
17 that three months is about the minimum you could possibly
18 get because of workflow realities. Maybe I just
19 misunderstood.

1 MS. CHASSER: Yeah. Well, we can, I believe,
2 get to the 270. You saw that. But, you see, at one
3 point, depending on our staffing level, it's a matter of
4 maintaining a backlog enough so that we don't have people
5 just standing there, waiting for work to come through, but
6 just sort of keep the process flowing. Does that answer
7 your question?

8 MR. STIMSON: Yes.

9 MS. CHASSER: Our goal for registration full
10 disposal for this fiscal year is 15.5 months. We have
11 already dropped that by about a month in the first
12 quarter. And what we will see, as we start working back
13 these cases, is that that back-end pendency will be
14 dropping.

15 Our goal in 2002 is, as you can see, 15 months.
16 And our goal in 2003, again, the business plan is to
17 reduce that to 12 months. So we're looking at, in '03,
18 based on our business plan, at two months first action;
19 pendency, 12 months to full disposal.

1 MR. NICHOLSON: Anne, do you do any comparative
2 studies with pendency issues from other countries?

3 MS. CHASSER: Well, I know that we have done
4 some comparative studies with our friends up north in
5 Canada. And the pendency in Canada is, I think to first
6 action, 14 months. And I haven't heard about the other
7 developing countries.

8 MR. PRICE: And your goal of 12 months for
9 fiscal year '03 is, also, kind of 80 percent (inaudible).

10 MS. CHASSER: Right. Our entire '03 budget is
11 structured with the assumptions of 80 percent of
12 (inaudible).

13 If you want to turn to the next page, our
14 staffing level.

15 Currently, some of the issues that are facing
16 us. We planned in our '02 budget for a filing level of
17 300,000 classes. And part of our plan in '02 was an
18 attrition of 10 percent over the previous year.

19 What we are seeing is, one, the level of

1 filings, of course, are decreasing and our attrition rate
2 is almost nonexistent. In the first quarter, we've loss
3 only four people. And according to the plan, we were to
4 have an attrition of 10 percent. I think we should have
5 lost an additional six individuals.

6 So when you look at our funding issue, part of
7 the budgeting plan for '02, the retention and the
8 attrition factor was budgeted into the overall financial
9 picture.

10 MR. ALEXANDER: Anne, when you answered David's
11 question about 2.7 being necessary to keep the flow, that
12 was premised on the fact that you would have the same
13 number of examining attorneys and staff as you do now.

14 MS. CHASSER: Well, how we are managing that.
15 And I believe it was at our last meeting that we talked
16 extensively about our strategy in the first quarter.
17 Actually, it was to maintain jobs within the Trademark
18 organization. So how we've been able to manage that is
19 through assignment of work detail to other organizations

1 within the PTO that support the Trademark mission for the
2 most part.

3 There are a several positions over in the Patent
4 organization -- and, again, this has to do with the fence
5 around Trademark revenues. There are a number of
6 positions extended, I believe, over in the Patent
7 organization. And the Patent organization is paying for
8 those positions.

9 So how we judge how the detail program is
10 working is based on our first action pendency. And so
11 right now, we have 90 examiners out on various details,
12 temporary assignments, in other parts of the organization.

13 We are maintaining a three-month pendency. So if we see
14 that first-action pendency go up, then we'll be pulling
15 people from back from the details.

16 And, again, some of these details, they're
17 rotating in terms of four-month assignments. So we have
18 the ability to keep shifting those positions with the goal
19 of maintaining a three-month pendency.

1 MR. ALEXANDER: Is the Patent side still hiring
2 examiners?

3 MS. CHASSER: Yes, yes. Although the Patent
4 side actually is not experiencing the same level of
5 attrition. I think it has to do with the economy as well.
6 So their attrition is not as high as it had been in the
7 past. But the plan is to continue to hiring.

8 I think it is in 2002 -- what is the hiring
9 plan?

10 MR. CRAWFORD: It will be somewhere in the 600
11 employees. If we get the President's budget for '02, it
12 will be including an attrition distribution of about 900,
13 950. We hire fewer because right now the attrition rate
14 is lower, 800, 900 level.

15 MR. ALEXANDER: Howard, how many of the
16 examining attorneys in the Trademark side have an
17 engineering background with qualifications to become
18 patent examiners?

19 MR. FRIEDMAN: I think the office has done some

1 studies.

2 MS. CHASSER: I think we -- and correct me if
3 I'm wrong. Oh, I guess -- I think we did an analysis of
4 the scientific or the technical background. We came up
5 with 26.

6 MS. STROHECKER: That sounds about right.

7 MS. CHASSER: And now the issue is whether the
8 examiners would choose to transition over to the Patent
9 side of the house. We have 10 examiners that are now
10 working and detailed to Patent.

11 MS. STROHECKER: Well, we have 10 people who are
12 selected. But interestingly enough, only seven of them
13 have accepted. So we're still -- we'll probably make
14 other choices if they're other qualified candidates. But
15 that detail is set to start sometime late this month.

16 MR. ALEXANDER: What is the compensation
17 difference, if any?

18 MS. CHASSER: Well, it would be the same
19 compensation. Is that correct?

1 MR. CRAWFORD: It would be a little higher
2 because -- well, for detail, there's no change in
3 compensation. If they were to be reassigned, the Patent
4 examiners are on the higher pay scale than the Trademark
5 attorneys.

6 MR. STIMSON: What are some of the other
7 non-examiners and projects? You mentioned seven in the
8 patent slide. But what sort of work --

9 MS. CHASSER: Well, just to give you a very big
10 picture, we have a number of detailees that are working in
11 the Office of Legislative and International Affairs in the
12 Office of the General Counselor. We have a number of
13 individuals on detail to my office to work on the Madrid
14 Protocol implementation. We have some people at the TTAB,
15 in the Office of Financial -- in Clarence's office, and in
16 Human Resources. Where else?

17 MS. STROHECKER: We have some people, in
18 addition to the ones that you mentioned in your office, we
19 have people working on quality improvement issues.

1 MS. CHASSER: Oh, that's right.

2 MS. STROHECKER: Some of the things that we have
3 always wanted to do but never really had the opportunity
4 to do. And we have people working on other automation
5 issues, improving the system, getting us ready for
6 electronic examination.

7 MS. CHASSER: Let me introduce Debbie Cohen who
8 came in a little late. And Debbie is another Group
9 Director for the Law Offices. And Debbie has been
10 championing the whole program. She's the one.

11 MR. STIMSON: And to follow-up. Is reassigned
12 right away (inaudible), or is it volunteer?

13 MS. CHASSER: Oh, it's volunteer. We have not.
14 Any other questions?

15 We talked a little bit about the pattern in
16 filing applications. And one thing we know for certain is
17 that we're not able to really predict. But what we do is
18 look at the past to indicate the future.

19 And you can see from the line -- is that red on

1 the bottom? The red line, you can see that there's been a
2 drop. Now, when we look at other historic patterns,
3 again, we see them. And, again, I'm not going to predict
4 the future because we're not able to predict the future.

5 But in 1999 we saw the same pattern. And that
6 proceeded the highest level of filings we ever received in
7 2002. So our current thinking is that our filings will be
8 below the projection. At the end of day, we don't know.
9 Okay. Griff.

10 MR. PRICE: You may have mentioned this earlier
11 this morning. But do you have any preliminary read on the
12 number of classes filed in January?

13 MS. CHASSER: It's too early to tell. But let
14 me say that our initial numbers indicate that the January
15 filings are higher than December. That's lower than
16 October or November.

17 MS. STROHECKER: That's true.

18 MS. CHASSER: I'll go ahead with the management
19 decision.

1 MS. STROHECKER: Actually, all we know right now
2 is based on that materialization of file wrappers for both
3 the paper and electronically filed applications. And
4 Anne's statement is correct.

5 Based on the serial number account and prepaid
6 revenue, which also includes classes that are paid
7 additionally in addition to the new applications that are
8 being filed presently, it appears that filings for January
9 may go back up to the November levels. But we won't have
10 the actual fee-paid class count until we can get all those
11 applications that filed through January 31 uploaded into
12 the (inaudible). That's where we get our information
13 from.

14 MR. ALEXANDER: How would they compare to the
15 prior January?

16 MS. STROHECKER: To the prior January?

17 MR. ALEXANDER: Yes.

18 MS. STROHECKER: I didn't do that calculation.
19 But as you can see on the chart, the prior January was

1 probably about 20 percent or so higher than where we
2 currently -- no, more than 20 percent higher. Probably
3 about 25 percent higher than where we currently are. So
4 we're still not -- we're still not bouncing back up so to
5 speak.

6 MR. PRICE: Based on what Clarence said earlier
7 this morning, that means that, in essence, the office is
8 still holding its breath --

9 MS. CHASSER: Absolutely.

10 MR. PRICE: -- in terms of fee reviews.

11 MS. CHASSER: As Clarence indicated, the next
12 several weeks are really critical because we'll be
13 approaching the six-month or half-a-year mark. And at
14 that point, we're really going to have to make some
15 serious decisions based on the data that we have which
16 actually leads me to the next slide.

17 Based on the information that we shared with the
18 Advisory Committee prior to the meeting, that you've all
19 had a opportunity to review in detail, what I'd like to do

1 at this point is throw it out to the user community to get
2 some feedback and recommendations on what you think, what
3 your advice would be, in terms of how you would advise the
4 Agency in terms of dealing with this issue. And if, in
5 fact, our filings do fall lower than the 300,000 to
6 anywhere between 210 to 255, what your advise would be.
7 So I'd just like to open the floor up for comments.

8 MR. ALEXANDER: Well, Anne, before we comment,
9 what does the Office believe the alternatives are?

10 MS. CHASSER: We have looked at a whole variety
11 of options. We have not made any decisions on that. But
12 we have looked at the option, of course, of our human
13 capital issue. We've looked at, you know, the possibility
14 of maintaining the positions through this fiscal year. So
15 we've actually looked at a whole host of options on what
16 we could do.

17 MR. ALEXANDER: Do you have the job openings to
18 maintain the work force through the fiscal year with a
19 drop constructively occupied?

1 MS. CHASSER: Well, the issue that presents
2 itself is more than one issue, of course, the funding
3 issue. Do we have the resources to maintain those
4 positions? And based on -- and I'll have Clarence jump in
5 on this point.

6 And, of course, the other issue is the workload
7 issue. Do we have enough work coming through the door to
8 maintain? If we have the revenue, then, of course, we can
9 continue this year on our plan in terms of funding those
10 positions to other relevant positions that support the
11 Trademark issue.

12 MR. ALEXANDER: So I'm sort of taking the
13 rabbinical approach and asking more questions than I
14 answer. Have you considered alternatives of less than
15 full-time?

16 MS. CHASSER: Yes. As a matter of fact, we have
17 offered -- for many years, we have offered a part-time
18 option. We have encouraged people to take sabbaticals.
19 We've encouraged people to work part-time. We are looking

1 at working with the Office of Personnel Management on
2 early retirement options. And we have explored all of
3 those options.

4 MR. ALEXANDER: Is there the ability -- and I
5 guess General Counsel could answer this -- of mandating a
6 one-day-off-a-week-type program, or do the union contracts
7 affect that? Or how do you --

8 MR. TOUPIN: All of the above.

9 MR. ALEXANDER: Okay. So we can operate on a
10 clean slate as if there was nothing binding us, and we
11 just make suggestions.

12 MS. CHASSER: Right.

13 MR. ALEXANDER: The floor is open for
14 suggestions.

15 MR. PIRKEY: You mentioned earlier that filings
16 were down in the first quarter 23 percent, but fee income
17 was only down 7 percent.

18 MS. CHASSER: Right.

19 MR. PIRKEY: Is the key issue really the

1 decrease in the filings or the decrease in fees?

2 MS. CHASSER: It really is really both issues.

3 It's the fee level as well as the downturn in filings.

4 Because, you know, on one hand, if the fee revenue was
5 coming in to support the budget for '03, then the decision
6 would be made that, rather than using that revenue to
7 support the personnel cost -- and 85 percent of our
8 overall budget accounts for personnel costs. And, you
9 know, that's benefits, salaries, and so forth.

10 So would we want to use that revenue to support
11 the human capital or use that revenue, redirect that
12 revenue, to use for other purposes within the office. And
13 then the other issue, of course, is there enough work for
14 the current level of staffing.

15 MR. PIRKEY: Well, if you had adequate fee
16 income, would you have sufficient detailing and
17 opportunities to occupy the personnel if there wasn't
18 enough work for them to do in the regular course of their
19 duties?

1 MS. CHASSER: There is always -- I mean, I think
2 that those that have had the examining attorneys on detail
3 will be great proponents of continuing that wonderful
4 support that our folks have provided in other areas of the
5 office and I think, you know, building the infrastructure.
6 And we can always improve our infrastructure. And that's
7 really what we've been doing on this issue.

8 MR. PIRKEY: One more question. If the
9 10.3-percent surcharge gets enacted, that would be
10 effective when?

11 MS. CHASSER: In '03. It would begin in
12 October.

13 MR. ALEXANDER: Clarence, do you have a comment?
14 Go head.

15 MR. CRAWFORD: I just wanted to mention that if
16 you think about the issue, you need to think about it in
17 more than just one fiscal year, more than this year but
18 next.

19 My judgment is this year is more of a workload

1 versus income. It could be income of the filings don't
2 pick up and the income doesn't pick up.

3 Next year, if we go through this year either
4 flat or below, then we have the potential of not only
5 having a workflow issue, enough work, we, also, may have a
6 money problem in the ability to pay the funding so far as
7 well.

8 So as you think about it, it's more than one
9 year. You need to think about it in those terms.

10 MS. CHASSER: Now, correct me if I'm wrong,
11 Clarence, but about a third of our '03 budget comes from
12 revenues generated in '02.

13 MR. CRAWFORD: No. It's a third of the -- you
14 said '02?

15 MS. CHASSER: Yeah, the '02 fees carry over to
16 '03.

17 MR. CRAWFORD: It's \$100 million for '03, from
18 the prior year. So the margin for error is going to be
19 higher.

1 Then as we look at the issue, when Anne was
2 talking about the strategy of preserving jobs, which we
3 all want to do, we were, also, looking at a host of
4 economic assumptions that says that recovery would take
5 place in '02, perhaps in the first or second quarter.

6 I think both (inaudible) recovery off until for
7 the second half of the year, perhaps sliding into '03. So
8 the economy seems to be slower to respond. And we need to
9 look, as Anne said, to all the options available and what
10 we would do.

11 MS. KANE: Getting back to Miles and his feeling
12 of being incensed, is there anything to do to get back
13 some of these fees that are diverted in this type of
14 situation? Is that just out of the question and we should
15 forget it?

16 MR. CRAWFORD: We have -- you say in fiscal year
17 '02? Fiscal year '02, this current year, we were able to
18 work out an arrangement with the Office of Management and
19 Budget -- and Congress allowed us to do it -- where we

1 actually did some of that. We may have to look at that
2 again for '03. It's highly irregular that they would do
3 that. But they did help us out a little.

4 MS. KANE: And then another perhaps much less
5 effective. The Madrid Protocol -- and I know you've got
6 funding issues on implementation and all of that -- are
7 you considering charging more application-wise for that
8 because, arguably, the applicant is saving money
9 initially. And maybe arguably the applicant will be a
10 company that can afford it more for that application.

11 MS. CHASSER: That's a good question. And I
12 don't think that we have really addressed that issue about
13 additional funding on Madrid Protocol.

14 MR. PIRKEY: Would the treaty permit that?

15 MS. BERESFORD: That's what I was about to say.
16 The treaty says that you can charge up to your national
17 fee for an extension of protection, but you can't charge
18 more.

19 MS. KANE: Okay.

1 MS. BERESFORD: So if you're talking about
2 extensions of protection coming into the United States,
3 there's a limit on that. Others that charge the U.S. can
4 have a charge for sending applications to the
5 international bureau, but that's really very much kind of
6 an administerial (inaudible) -- some if the examinations
7 are small. And that would be one place where, perhaps, we
8 could raise revenue.

9 But we, also, have some constraints of having
10 our fees align with what we're actually doing. So there
11 would be limited, I think, capacity to have a high fee.

12 MR. PRICE: I have a question for Clarence. I'm
13 trying to put the figures that you described in context.
14 And I think you said that if filings are flat or down for
15 all of '02, the problem really is a workload problem. But
16 I would assume that that's down to the level which you
17 mentioned before, which is 20 percent.

18 MR. CRAWFORD: That's correct.

19 MR. PRICE: If it complicates the problems.

1 MR. ALEXANDER: We really need to face up to the
2 question that Clarence posed: If the funds aren't there,
3 what is our recommendation. I've always been inclined
4 towards it's better to have a four-day workweek and more
5 people employed, recognizing that some people are
6 dependent upon their full income as a choice. Or
7 alternatively, apply that to those who are the least
8 seasoned and effective people, which is not necessarily
9 the most junior person in all cases.

10 Do we have any sort of rating system with
11 respect to examiners that would be a meritocracy that
12 would permit those who are the least efficient, based on
13 some rating system, put on a lower workweek?

14 MS. CHASSER: Sorry to interrupt, Mr. Chairman.

15 MR. ALEXANDER: It's okay. It's hard to do.

16 MS. CHASSER: I think that there are -- and
17 those that are better versed in the union contract. I
18 think that that's all spelled out based on union
19 requirements and so forth.

1 I might note -- and I think we shared this at
2 our earlier meeting -- that in September when all of this
3 came to light, we eliminated our Productivity Incentive
4 Award program, which was a bonus structure, to sort of
5 pull back on some of the work. And then we, also,
6 eliminated overtime. Those are two mechanisms we have to
7 sort of turn the spicket on and off. So we have been
8 exploring those kinds of options.

9 MR. ALEXANDER: Yes, Clarence.

10 MR. CRAWFORD: Just for clarification.
11 Something less than a full day, a full-week's work, or a
12 mandated one-day-off-per week or perhaps laying off people
13 altogether, require what we call an "adverse action."
14 It's an administrating due process that employees have.
15 And, generally, the rules apply in terms of seniority. So
16 the more senior you are, generally, the better off you
17 are.

18 What we have with the contract -- and, Howard,
19 you can help me -- the contract describes sort of the

1 process of how the management and the union would have to
2 negotiate as to how we did it.

3 But the decision we do that -- and I sure hope
4 we don't have to go in that direction. A decision, if we
5 go in that direction, management would be the ones to
6 decide that. And we would have to work with the union in
7 terms of negotiating the hows.

8 MR. ALEXANDER: For those that just came back on
9 or joined the Board, the general feeling of the TPAC --
10 and it's reflected in our annual report from November --
11 was that we built up a very valuable workforce and
12 experienced workforce; and that our first desire was to
13 retain that workforce in the hopes that applications would
14 go up again, and we would not be hiring inexperienced
15 people to replace experienced people who had to go
16 elsewhere for employment; and to take a look at it this
17 year to see whether that philosophy can be maintained as
18 long as the budget permitted and workload permitted it.

19 And that was sort of the essence of our year-end

1 report, everybody recognizing that six months into this
 2 year we would have to take another look to find out, at
 3 least, where the TPAC came down in recommending a course
 4 of action for the coming year.

5 I think this may be a good time to have our
 6 lunch break and continue after lunch, unless you feel --

7 MS. CHASSER: No, that's fine.

8 MR. ALEXANDER: It's 1 o'clock. And I would say
 9 2:15 would be a good time to get back together if the
 10 Commissioner agrees.

11 MS. CHASSER: Okay. That's fine. I think we
 12 have a lot of issues to talk about.

13 [Lunch recess.]

14 MS. CHASSER: Before we begin wrapping up our
 15 morning session, I'd like to introduce everyone on the
 16 Trademark Advisory Committee. I'd like to introduce Jon
 17 Dudas, who is our new Deputy Under Secretary for
 18 Intellectual Property and Deputy Director for the U.S.
 19 Patent and Trademark Office.

1 Now, we're very fortunate to have Jon join us.
2 Let me just give you a little bit of his background. Jon
3 most recently was -- actually, his experience, he had
4 practiced some intellectual property law in Chicago after
5 graduating from law school in Chicago and then came to
6 Washington and worked on the House Judiciary Committee
7 under Chairman Hyde, Henry Hyde, and helped him manage the
8 impeachment process. And he did such a wonderful job
9 there he was then elevated to work with the speaker, Mr.
10 Hastert, in managing the Floor activities for Mr. Hastert.

11
12 So he comes to us with pretty effective
13 management skills. I would say that anyone that can
14 manage -- what? -- 435 members of the House can certainly
15 manage us. And so I'll just turn this over to you, Jon.

16 MR. DUDAS: Thanks very much. It's a pleasure
17 to be here. I just wanted to stop by and introduce myself
18 and thank you all and tell you how wonderful it is to be
19 here.

1 As Anne as said, I had practiced intellectual
2 property law. I did primarily trademarks and tradedress
3 for a couple of years. So unlike a lot of folks that did
4 patent law, my intellectual property practical was more on
5 the trademark side, a little bit of copyright.

6 MR. MULLER: An honest living.

7 MR. DUDAS: But I ended up coming to the Hill
8 and working on a subcommittee on Courts and Intellectual
9 Property and worked on the AIPA. So you can imagine how
10 wonderful I feel that you're meeting here and what you're
11 doing. It is something that's much needed and has already
12 been very productive.

13 I ended up at full committee and proceeded to
14 work on intellectual property issues; but I did get
15 involved in the impeachment, and eventually the Speaker's
16 office, working on a broader array of things. And then I
17 came here. I was appointed just about a month -- about
18 exactly a month ago.

19 So I had told Anne and some of you already heard

1 this, and I probably shouldn't keep saying it because I'm
2 knocking myself down. But I was pulled aside by a senior
3 member of Congress very early on and told when you get
4 into a room with a bunch of people, you are going to find
5 that it's going to be find who is important and who is
6 not, who you need to listen to -- you just look at their
7 title. And the shorter the title, the more important they
8 are.

9 So I've graduated now to a 19-word title. So if
10 that tells you anything. Anne's the Commissioner. I'm
11 the Deputy Under Secretary and it goes on and on. I won't
12 even let you know. But if you have any questions --

13 MS. CHASSER: And I call him "boss."

14 MR. DUDAS: Anything to shorten it.

15 So if you have any questions of me, I'll
16 probably be in and out. I have another meeting. But I
17 wanted to stop in and say hello. If you have any
18 questions for me, please, let me know; and I'll be happy
19 to answer any questions you have right now if there is

1 anything useful in that regard. But, otherwise, I look
2 forward to working with you all.

3 Thank you.

4 MS. CHASSER: Thanks, Jon.

5 MR. ALEXANDER: We had lunch, but we, also, had
6 two items of business, neither which were particularly
7 confidential; and we want to make them public. And one
8 was to try and schedule the next two meetings while
9 everybody had their calendars present and we could wrestle
10 with it.

11 And we've tentatively scheduled a meeting for
12 May 23 which would be from 8 to 4. Half the meeting will
13 be open; half will be closed for budgetary matters. And
14 the second meeting scheduled on August 14, which is
15 tentatively set from 8 to 4, which will be an open
16 meeting.

17 We, also, asked members of the TPAC for
18 preference for assignments to the committees that I
19 mentioned earlier in the opening session, which were the

1 TTAB committee, which would be David Stimson and Siegrun
2 Kane.

3 Second committee would be Development Quality
4 Satisfaction and Morale internal to the USPTO, which would
5 be Helen and John and Howard and Lawrence. The Customer
6 Satisfaction Committee would be Lewis and Kim. And the
7 Electronic Government Committee will be Griff and Joe.

8 And I think that covers our closed session
9 except for the ham and turkey and vegetarian sandwiches.

10 We'll ask Anne to continue, who we cut off
11 earlier, with respect to the discussion and input.

12 MS. CHASSER: Just to follow up on this last key
13 issue. I wanted to get a feel from the members of the
14 TPAC about what you're seeing in your own business in
15 terms of -- we did talk about that a little earlier but
16 just to get it on the record. What you're seeing in terms
17 of levels of filings and if you think that this mode that
18 we're using in terms of what the potential level of
19 filings will be in '03 if that meets with what you're

1 seeing in your business.

2 MR. ALEXANDER: I think we had the input from
3 the Kodak people already. From outside counsel, it's
4 very, very difficult for me to tell. It would be like the
5 Russian Roulette for me to guess whether it's going up or
6 down or staying the same. Anybody else have any input?
7 Siegrun.

8 MS. KANE: I can second that. Some business are
9 certainly down just because economically things are bad.
10 Some are up so...

11 MS. CHASSER: What sectors are you seeing up?

12 MR. ALEXANDER: The ones that are up for us are
13 reidentification people who are changing their names,
14 spin-offs, some communications fields. And a number of
15 companies are dividing up. And separate companies are
16 adopting new names for what's normally a division, and
17 they're registering in all classes.

18 But IPOs are really gone. The Dot Coms are no
19 longer doing what they were doing before. People

1 developing new businesses are still trying to patent
 2 anything in sight, patentable and unpatentable, attempting
 3 to get more for their companies with the idea more patents
 4 should they ever go to the IPO. But trademarks are not
 5 very similar.

6 MR. PIRKEY: Miles, there's a record of this,
 7 you know.

8 MR. ALEXANDER: I know. This is all common
 9 knowledge, all common knowledge.

10 MS. CHASSER: If we can turn to the next slide,
 11 then.

12 E-Government Performance. And I think we
 13 already agreed that our strategic goal for this year is 50
 14 percent. At the end of the first quarter, we were at
 15 29-percent electronic filing.

16 Now, while our work-at-home program is not
 17 necessarily e-Government, we're able to take advantage and
 18 move our electronic, our telecommuting, program forward
 19 because of the capabilities that we have achieved through

1 our e-Government initiative.

2 Currently, we have 90 examiners who are working
3 at home. Our plan for this year is 110. And, currently,
4 at the end of the first quarter, we have 100.

5 Now, as a sideline, part of the workforce
6 restructuring plan, which Clarence Crawford spoke about
7 earlier, there is a recommendation of those positions
8 which are eligible for telecommuting. And we identified
9 positions in each of our organizational areas within the
10 PTO.

11 Of those that are eligible to work at home, the
12 goal was to achieve 25-percent work-at-home telecommuting.

13 And that has to do with a -- is it a statute or
14 regulation that is coming?

15 MS. STROHECKER: It's a law.

16 MS. CHASSER: It's a law. And in the Trademark
17 operation -- this isn't on the slide -- but 295 positions
18 were designated eligible for telecommuting. And right now
19 the total number of participants in the Trademark

1 organization, which includes examining attorneys as well
 2 as paralegal staff and some other staff positions, we
 3 currently have 122 working at home. So the total
 4 percentage of eligible employees is 41 percent.

5 So we're, on the Trademark-side of the house,
 6 way out in front of that as well.

7 But, again, we're able to achieve those kinds of
 8 numbers because of our other e-Government initiative
 9 operations within the Trademark operation.

10 Next slide, please.

11 MR. ROSE: Anne, can I ask: What's the legal
 12 requirement for the percentage of employees eligible?

13 MS. STROHECKER: For this year, it will be 25
 14 percent of all eligible employees. So the Agency has to
 15 first designate what position or jobs are eligible. And
 16 then 25 percent of those are supposed to be working at
 17 home.

18 MR. TOUPIN: And I'd like to correct that. They
 19 don't have to be working at home. It has to be available

1 to them to work it.

2 MS. STROHECKER: Available; right. In our
3 Agency, though -- I mean, so far we've had everybody who
4 has been offered --

5 MR. TOUPIN: I'm not sure that's across all work
6 areas.

7 MR. ROSE: Is this a regulation that just
8 pertains to the Washington, D.C., area?

9 MS. CHASSER: It has to do with the congestion
10 problem around D.C.

11 MR. ROSE: I see.

12 MR. ORESKY: There is a 50-percent employment in
13 the law. That's for next year.

14 MS. STROHECKER: Yes.

15 MR. ORESKY: And it's Frank Wilt's bill, by the
16 way.

17 MS. CHASSER: He's a congressman from Northern
18 Virginia.

19 MR. ALEXANDER: What is the requirement for

1 work-at-home people that exists with respect to having to
2 come in in order to interface with the office on training
3 and other things?

4 MS. CHASSER: Well, it actually depends on what
5 unit they are in within the organization. It's different
6 requirements depending on the operational unit that you
7 report to.

8 Currently, right now, our work-at-home attorneys
9 are required to come in one or two days a week.

10 MS. STROHECKER: Most of them come in two days
11 per week. We have a few of them coming in one day a week.

12 And then those on the hoteling pilot program come in to
13 work actually just four hours a week.

14 MS. CHASSER: We have our hoteling program,
15 which was actually part of our '03 submission, in which an
16 easy -- it's built on the model of corporate
17 telecommuting, hoteling, where we would -- a simple way of
18 looking at it is five people would share one office and
19 you make a reservation.

1 And our goal is eventually, if this is a success
2 program, to actually return office space back to the
3 corporate side of the house and use the same revenue to
4 redirect it towards our e-Government initiative. So this
5 is a very positive program.

6 Moving along to the next slide. Oh, this is it
7 here. I wanted to talk about this.

8 Just to give you a chart on where we are in our
9 other areas of electronic filing. You can see that, with
10 the other subsequent forms, we're not having the same
11 level of success in terms of filing electronically;
12 although, the SOUs and the extension of times are
13 beginning to pick up along with the affidavits. Griff.

14 MR. PRICE: What time period is this slide
15 related to? December '01?

16 MS. STROHECKER: Yes.

17 MS. CHASSER: Yes. Now, I wanted to review
18 briefly with the TPAC some of our e-Government offerings
19 that we have achieved to date.

1 Of course, we have our trademark electronic
2 application system, known as TEAS, is the centerpiece of
3 our electronic e-Government offerings to the customers.

4 Recently, October 1, we initiated two new
5 payment options, electric funds transfer. And with the
6 deposit accounts now, they're processed in real-time which
7 was a problem before where applicants would file their
8 application and the deposit in the account was not in
9 real-time. So the application could be processed, but
10 then a couple of days later we'd find out that there
11 weren't funds in the deposit accounts. So then it would
12 be bounced back. So now all of the payment options
13 available, three different payment options, are in real-
14 time.

15 The electronic capture of new applications,
16 paper and electronic, since April of 1999. We are
17 scanning all incoming applications and correspondence to
18 the office. We're in the process now of working on a
19 pilot to capture electronically all outgoing

1 correspondence, office actions, et cetera. So this is the
2 beginning of creating the total electronic file management
3 system. And that should be coming on-line shortly. I'm
4 looking at our Chief Information Office.

5 MR. BOURGEOIS: Plans are being reworked, I
6 think.

7 MS. CHASSER: Electronic publication of the
8 Official Gazette. I hope all of you have had an
9 opportunity to visit our web site and look at the Official
10 Gazette which appears. We have five issues of the
11 Official Gazette available on our web site. It's in PDF
12 format, downloadable, and searchable. And that was
13 launched this spring. And our goal, eventually, is to
14 offer the Official Gazette only electronically. And we
15 don't have a time frame on that.

16 But we're hoping that the public acceptance of
17 that and use of the searchable format will really attract
18 customers. It's really a -- I hope all of you have had an
19 opportunity to look at that. It actually looks like the

1 Official Gazette as you pull up a page and so forth.

2 MS. KANE: Does that get open to public comment
3 that proposal, or is that an in-house decision?

4 MS. BERESFORD: If we only publish it
5 electronically, they're be a Federal Register Notice.

6 MS. CHASSER: On-line access, of course, to the
7 Official Gazette and all registrations.

8 We have all on-line searching of all trademark
9 data and the status of all pending applications. And
10 that, again, is available to anybody in the world at any
11 time, day or night. And that's all free and available
12 through our web site.

13 Some of our commitments that we are looking to
14 bring on board within this fiscal year would be additional
15 electronic forms available on the web. We're looking at a
16 Change of Correspondence form which will -- where you can
17 actually, you know, input the information electronically;
18 and then all the records for that correspondence would be
19 changed automatically.

1 And we're in the process of launching this year
2 an Office Action form electronically as well a Response to
3 Office Action.

4 There has been some concern about the format
5 that our offerings have been presented in, and that's
6 HTML. And we're looking at bringing in the XML format.

7 I talked a little bit about the capturing of
8 data incoming and outgoing.

9 Electronic publication and distribution of the
10 TMEP. We're in the final stages of review through our
11 General Counsel's office. And, again, our Trademark
12 Examination Practices will be available on-line,
13 searchable format. It is very cool, I have to say.

14 And the beauty of this electronically -- again,
15 it's web-based, and we will be able to update this on a
16 much more regularly basis. And so we think that this is a
17 tremendous service and tool back to our customers.

18 And then we have talked about delivery of
19 electronic examination through first office action.

1 Again, that's correspondence back, and where our examiners
2 are actually pulling the information from the electronic
3 data for office action.

4 MR. MULLER: What about examiner's amendments?

5 MS. CHASSER: Yeah, that's one of the forms
6 that's coming out this year. I'm look at Craig for that.
7 Is that correct?

8 MR. MORRIS: That's a component of the
9 (inaudible) Office Action form.

10 MR. NICHOLSON: It's my understanding that some
11 examiners are now already issuing office actions --

12 MS. CHASSER: Yes. We --

13 MR. NICHOLSON: -- electronically. Is that
14 voluntary?

15 MS. CHASSER: Yes, we have three e-Commerce Law
16 Offices. And the examiners in the e-Commerce Law Offices
17 was on a voluntary basis. And part of the requirement for
18 this voluntary -- volunteer -- assignment was that that
19 you would communicate electronically with the customer if

1 the customer so choose to.

2 MS. KANE: Will the new TMEP adhere to the same
3 type of paragraph cites?

4 MS. CHASSER: It looks very much like the old
5 TMEP. But it's much for user-friendly and adaptable in
6 terms of --

7 MS. KANE: So if you go to cite something, the
8 paragraph numbers don't expect to be changed or not.

9 MS. BERESFORD: It has been reorganized. And
10 there are changes in the paragraphs. That's correct. The
11 old TMEP paragraph numbers will not necessarily be the
12 correct one.

13 MS. CHASSER: So I gave you the wrong
14 information. But the searchable feature -- I mean, I
15 think you will really enjoy working through it because --
16 I was very impressed.

17 MR. ALEXANDER: What was the reason for not
18 following the old paragraph system? Do you have new
19 sections in it?

1 MS. BERESFORD: We have some new sections. We,
2 also, have large parts that will be deleted because they
3 were out of date and they're no longer relevant. We're
4 always, believe it or not, trying to reorganize it into
5 being a more user-friendly and sensible document. So in
6 that spirit, there were some changes made to consolidate
7 sections, et cetera.

8 A lot of the chapters follow much the same
9 outlines, but there are changes in some chapters.

10 MS. KANE: When do you expect this?

11 MS. CHASSER: Well, actually, we're hoping -- by
12 looking at General Counsel, because final approval comes
13 from the Office of General Counsel. So shortly.

14 MS. BERESFORD: In my notes I say, hopefully,
15 we're to start putting it up on web by the end of this
16 month. We have all -- I think -- Jim, we have all
17 chapters approved except for one.

18 MR. TOUPIN: We're down to right at the end.

19 MS. BERESFORD: Yeah. So we're already

1 converting the chapters that we have into the format, the
2 PDF format, that they'll first appear on the web site. So
3 we're ongoing with the process of getting it ready to be
4 presented electronically on our intra- and internet sites.

5 MS. KANE: And will it become able in paper
6 form?

7 MS. CHASSER: There are many forms and services
8 out there that will be provided electronically. And we
9 will forward it to the Government Printing Office if
10 there's a demand, and then they can print the copies for
11 us. Plus, they're be available at the Patent and
12 Trademark Depository Libraries as well. Okay?

13 I want to be sensitive to time. This is another
14 point where we want to get some input from the Public
15 Advisory Committee.

16 We talked a lot about a five-year business plan,
17 and we talked about our goals. And the expectation from
18 our stakeholders on Capital Hill and OMB is that we would
19 deliver our electronic workplace by 2004.

1 Based on that, our expectation is that we need
2 to achieve a 50-percent electronic filing by 2002 and 80
3 percent by 2003 and thereafter.

4 What we wanted to do is get some input, given
5 that the stated option to the M- word, "mandatory,"
6 electronic filing. We'd just like to hear from the TPAC
7 on your recommendations on how we might be able to
8 implement the electronic workplace by 2004 absent
9 mandatory electronic filing.

10 MR. ORESKY: Does it look like we're on track
11 with the 50-, 80-percent numbers?

12 MS. CHASSER: Right now, we achieved, as I
13 reported, a 29 percent at the end of the first quarter.
14 We actually saw sort of a leveling off at about 25 percent
15 where we didn't see much gain for a long time. It's hard
16 to say what that jump of 4 percent means, if that's the
17 beginning of the next trend. It's hard to know.

18 MR. ALEXANDER: Let me go ahead and state the
19 three questions as they were given and as I understood

1 them.

2 One, "The members of the TPAC agree that the
3 USPTO approach to rely on information technology to
4 deliver services and information to support changes that
5 result in increased use of electronic filing and
6 communications."

7 That's just if you're in favor of it.

8 Second question: "Do members of TPAC support an
9 increase in filing fees for filing paper applications?"

10 And the third question is: "Should USPTO
11 proceed with the proposed rule to require electronic
12 filing on a phased-in basis."

13 I think everybody here has previously expressed
14 the view that they're in favor of electronic filing with
15 exception of the two brand new people who were not on the
16 TPAC before.

17 So you have past input. And I guess the issue
18 from the two new members if they have any differences.
19 And that probably should be expressed or if anybody's

1 changed their mind about general approval about promoting
2 electronic filing.

3 MR. MULLER: Well, I'll start by saying I'm
4 highly in favor of electronic filing. Anne and Bob and
5 Craig came down to Houston on September 6 and gave a
6 presentation on electronic filing. And I think everybody
7 was highly excited about it in the Houston community. And
8 I hope that they've seen an increase in electronic filing.

9 I would be more interested in what are the
10 barriers to people filing electronically and understanding
11 those. Because, I mean, I can't perceive them. I'd like
12 to understand why people don't file electronically.

13 MR. ALEXANDER: Inertia.

14 MR. MULLER: That's another point. I wonder,
15 when PTO goes out and gives these programs in the country,
16 if they see an increase in the electronic filing in the
17 geographic areas after they've been there.

18 MR. ALEXANDER: You had one in Atlanta. Anne,
19 what is the response? Has anybody tracked whether you had

1 increases in Houston and Atlanta and other areas that got
2 programs? Boston? Chicago?

3 MS. CHASSER: I know that we were going to
4 follow up. I'm looking at Mr. Morris over here. Are we
5 able to track that yet? No. No, we haven't.

6 I have to say, though, part of our strategy is
7 to, first of all, make the system so good and so efficient
8 that people will want to use electronic filing. And then
9 we have, also, been going all over the country promoting
10 it. And we will continue.

11 We have quite a full schedule this summer -- I
12 mean this --spring -- to promote electronic filing. And
13 the response been very favorable. But I don't know that
14 we have the statistical information other than there's
15 been a bump from 25 percent to 29 percent in the first
16 quarter.

17 MR. PIRKEY: Well, I heard Craig's presentation
18 in Los Angeles the other day. And I gather there's
19 another barrier to the electronic filing from some of the

1 questions that were asked in L.A. And they have to do
2 with practitioners that have the feeling that their fee is
3 not justified if it's done electronically. And I think
4 that may or could be a real barrier for a lot of people,
5 particularly, the small clients and companies filing
6 electronically. I don't know whether the --

7 MS. KANE: You mean the fee charged by the PTO,
8 or their own private fee?

9 MR. PIRKEY: I perceive this. I don't know
10 whether there's any reality to that or not. Just from the
11 fact that there's a reluctance.

12 MS. CHASSER: Well, I think it was -- I don't
13 know whether I should speak to that or whether to --

14 MR. ALEXANDER: We have found no -- at least in
15 large firms, we perceived no difference in the client's
16 perception of the value of the work, electronically or
17 otherwise. But I can see where a small practitioner, a
18 mom-and-pop-type operation. We'd like to give them
19 something as hard evidence that they have to show their

1 client and have hard copies of everything in front of
2 them. And, of course, that can be done electronically as
3 well. Just print it out and send it to them.

4 MR. PIRKEY: I was just curious as to whether
5 this is a real issue.

6 MR. ALEXANDER: I found, at least, subsequently,
7 this is more in terms of payments and other problems.
8 There are still some problems with electronic filing that
9 have to be ironed out. And it sort of explains the fact
10 that either INTA or ABC, none of the major organizations,
11 are you yet in favor of making it mandatory as I
12 understand it at this time? They want to leave open the
13 possibility (inaudible) of making it mandatory at some
14 point.

15 MR. MULLER: Is there any precedent in the
16 Federal Government that people are required to file
17 electronically other than are not allowed to submit paper
18 copies? Does anybody know?

19 MS. CHASSER: Yes. Within the government, the

1 SEC requires mandatory electronic filing. And we have
2 noted that many of the courts are now requiring, Federal
3 Courts, are requiring mandatory electronic filing.

4 Karen, were there other?

5 MS. STROHECKER: There were state courts
6 primarily in the State of California. And there was a
7 state court in Texas that was mandating a certain type of
8 file. We did a bit of research just to see whether or not
9 that was, in fact, true.

10 But it clearly appears to be a trend that the
11 court system has recognized that, for filings of
12 documents, especially large documents, that it facilitates
13 the process.

14 MR. ALEXANDER: And once in a while there -- has
15 no paper files. Siegrun, did you get from the general
16 feeling that it --

17 MS. KANE: I'm in support of the general
18 concept. I'm not sure I'm in support of a mandatory
19 approach.

1 MR. ALEXANDER: The second questions was: "Do
2 members of the TPAC support an increase in fees for filing
3 paper applications and responses?" The flip side of that
4 is the reduction of fee for electronic filing is not
5 mentioned.

6 MS. CHASSER: Well, I have to adjust that.
7 Because, first of all, the overall strategy would be to
8 charge the increased cost of processing paper over
9 processing information electronically. And then once we
10 have a history to see, you know, what that would bring us,
11 we would eventually look at lowering the cost of
12 electronically filed applications.

13 MR. MULLER: I hope we consider our treaty
14 obligations in association with that because I don't know
15 if we're allowed to charge for paper copies under such
16 treaties.

17 MS. CHASSER: We have investigated it, though.

18 MS. BERESFORD: I don't think there's a problem
19 as long as we charge everybody for filing paper.

1 MR. ALEXANDER: A nondiscriminatory rule. Does
2 anybody else have any thoughts about this here?

3 MS. KANE: I really can't articulate this too
4 well, but I think there is something wrong with charging.
5 Maybe it's because I think that a smaller practitioner is
6 going to be the type that would be using the paper filing
7 more and so he'd be at a disadvantage. I don't know.

8 MS. CHASSER: Well, one of the requirements in
9 our rule, our proposed rule that we floated, is there is a
10 provision for those who don't have access to the internet
11 that they wouldn't be obligated to file electronically.

12 MS. KANE: How would you police that?

13 MR. ALEXANDER: Affidavits.

14 MS. BERESFORD: But they would still pay the
15 fee.

16 MR. MORRIS: Actually, our experience has been
17 the opposite in terms of it's the solo practitioners
18 really are the ones that are the big electronic filers.
19 It's the big law firms that are saying, oh, we have a lot

1 of different issues to deal with. We've seen a lot of
2 small practitioners say that electronic filing for them is
3 truly the only way to go.

4 MR. MULLER: What's the situation with patent
5 filings when you indicate that you're going to file
6 outside of the United States? In other words, when you're
7 going to post your patent in 18 months, is that mandatory
8 that you file like that?

9 MS. CHASSER: No. And I really can't speak to
10 the Patent side of the house. The Patent electronic
11 filing -- we're a little further ahead where we are than
12 the Patent side of the house. So I can't really speak to
13 what the requirements are.

14 MR. ALEXANDER: Any other thoughts on increased
15 fees for paper filing? Is the silence to be taken as
16 support or opposition to the concept?

17 MR. STIMSON: I think we're already in agreement
18 with this.

19 MR. NICHOLSON: I don't think our views as a

1 whole has changed.

2 MR. ALEXANDER: Okay.

3 MS. KANE: We, previously, have gone on record
4 as appointing higher charges for the paper filing.

5 MR. STIMSON: As long as there's not going to be
6 increased cost in order to send --

7 MS. KANE: And then when would you start -- what
8 kind of a base would you be looking at for deciding what
9 the increases cost would be?

10 MS. CHASSER: In terms of determining what the
11 cost would be.

12 MS. KANE: Yes.

13 MS. CHASSER: We actually have -- Clarence
14 Crawford talked about our example on activity based cost
15 accounting. And so we're able to actually go back and
16 track what it cost us to process paper versus electronic.

17 MS. KANE: Do you have an idea now?

18 MS. CHASSER: I don't know if I'm prepared right
19 now to say publicly what that is. But, certainly, if we

1 move forward with this, we would do this through the
2 Public Register Notice to the public.

3 MR. ALEXANDER: Is it less than double?

4 MS. CHASSER: Oh, yes, considerably less than
5 double.

6 MR. ALEXANDER: Now that we've played twenty
7 questions.

8 MS. CHASSER: It's bigger than a breadbox.

9 MR. ALEXANDER: Let's move on to the third
10 question which was: "Should the USPTO proceed with the
11 proposed rules to require electronic filing on a phased
12 basis?"

13 I think we came to the conclusion we were not
14 going to recommend it immediately. And a phased basis, of
15 course, can be 10 years or 2 years. And that's a
16 difficult question. Any thoughts on that?

17 MS. CHASSER: To clarify that, if I might. When
18 we look at the opposition to electronic filing, oftentimes
19 it has to do with signature issues and attachment of

1 specimens under the current protocol that we have.

2 Fifty-five percent of all of our filings are ITU
3 wordmark filings. And so we're talking in terms of a
4 phased-in approach. It would be, perhaps, that all ITU
5 wordmarks would be required to be filed electronically and
6 then sort of phase -- you know, force people to start
7 using the system and be comfortable with it. And then,
8 eventually, we'd move into the other kinds of marks.

9 So that's really what we were thinking.

10 MR. NICHOLSON: Is that 60 percent your
11 experience with electronic filing or filings overall?

12 MS. CHASSER: Overall filings.

13 MR. NICHOLSON: Do you have any sense for
14 different types of marks that being are used for
15 electronic applications; are there any?

16 MS. CHASSER: I don't know. Does anyone know?
17 The question is what kinds of marks are being filed? Are
18 they new spacemarks or ITU on our electronic applications?

19 MS. STROHECKER: The number is slightly greater

1 than for overall. It's slightly above 70 percent that our
2 filed with the intent-to-use basis, less than 30 percent
3 use. And, overall, it's about 68 percent. So it's just a
4 marginal difference between paper and electronic filing.

5 MS. KANE: So what do you do with the
6 specimen-of use situation?

7 MS. CHASSER: That's protocol with the
8 (inaudible) attachment to the file.

9 MS. KANE: And you're thinking of not accepting
10 the mailing date for the paper application as the date; is
11 that correct? Do I understand that correctly?

12 MS. CHASSER: One idea that actually was
13 presented is -- the rule that was published for public
14 comment was to eliminate the 110 so that you essentially
15 would create an even playing field for all. The
16 application reaches the office, be it electronic or be it
17 by mail. Now everybody would have the -- there would be
18 preference for the certified mail. And, actually,
19 comments from the public, we got very little response from

1 that comment to that.

2 MS. KANE: Aren't you actually not creating an
3 even playing field, but you're penalizing the mailings?

4 MS. CHASSER: No, because there are options
5 available.

6 MR. VOICE: It's available to file
7 electronically (inaudible).

8 MR. ALEXANDER: Maybe more static than anything
9 else. Either you're rewarding or penalizing arguably,
10 depending upon your viewpoint. But it's clearly an
11 incentive to file electronically. And it may even be a
12 malpractice concern to file electronically.

13 MS. KANE: You mean not to file electronically.

14 MR. ALEXANDER: No. Malpractice if you fail to
15 file electronically.

16 MS. KANE: Yeah. And that's actually getting
17 exactly at what I was really concerned about.

18 MR. ALEXANDER: Somebody comes in a day before
19 you do, and you didn't file electronically.

1 MS. KANE: That's right.

2 MR. ALEXANDER: And you've got a lawsuit.

3 MS. KANE: That's right. And that does trouble
4 me.

5 MR. ALEXANDER: Again, would there be an
6 exception for somebody that did not have access to the
7 internet so that they would get the mailing date?

8 MS. BERESFORD: There's an exception to using --
9 in the proposed rule, there's an exception for those who
10 didn't have access to the internet. Yes.

11 MS. KANE: I think you need to do an awful lot
12 of complicated education.

13 MR. ALEXANDER: More lawyer education.

14 MS. KANE: Well, that's what I meant. But,
15 really, there are a lot of people out there.

16 (Group speaking.)

17 MR. MORRIS: I think you need to clarify that
18 point.

19 MS. BERESFORD: Okay. The proposed rule would

1 give an exception for filing on paper for those who didn't
2 have access to the internet, but 110 would not be
3 available.

4 MR. PRICE: You mean 110 would not be available
5 for the filing of any trademark document under the
6 proposed rule that we commented on last August.

7 MR. ALEXANDER: That is more troubling, I think.
8 Siegrun is, anyway.

9 MR. MULLER: Do we know what percentage of cases
10 are filed under Paris Convention electronically? I assume
11 it's going to apply to those based upon a foreign
12 certificate.

13 MS. STROHECKER: Actually, we get a slightly
14 higher percentage of foreign-filed applications
15 electronically than we do even on paper. I couldn't give
16 you the exact percentage right off the top of my head.
17 But I could certainly find it and --

18 MR. MULLER: Well, I assume that the
19 requirement, the phase-in requirement, would eventually

1 get to the Paris Convention. And we would be requiring
2 people filing under the Paris Convention to file
3 electronically.

4 MS. BERESFORD: Not as long as we're members.
5 The Trademark Law Treaty requires that we accept any
6 application from other trademark law treaty members if
7 it's filed on paper. So as long as we're a member of that
8 and we have a foreign-filer exception to the new Paris
9 Rule that we published for comment; so Paris Convention
10 members in general would have that exception.

11 MS. CHASSER: Yet our experience shows that a
12 higher percentage of those --

13 MS. BERESFORD: -- file electronically.

14 MS. CHASSER: Yeah, we look at -- they're about
15 15 percent of our applicants are non-U.S. applicants. And
16 of that, 15 percent, a higher percentage, file
17 electronically. So we're talking about --

18 MR. ALEXANDER: Does the foreign applicant get a
19 mailing date?

1 MS. BERESFORD: They get the date of the filing
2 that the electronic file arrives here. Foreign applicants
3 only get benefit of 110, of course, if they've mailed
4 their form, their application, through the United States
5 Postal Service using the Express Mail. Otherwise, they
6 don't get a date certain.

7 MR. ALEXANDER: Will they continue to get it
8 after the U.S. applicants does not get it?

9 MS. BERESFORD: No. 110 has no legal obligation
10 to prevent anyone to use 110. The paper-filing exception
11 comes through the Trademark Law Treaty.

12 MS. KORNIEWICZ: Do we have statistics about
13 Paris Convention filings over the years? Is it just a
14 comfort level that has increased with internet use such
15 that there's nothing that was done to facilitate this and
16 it was just in the normal course; or in such that we look
17 at our own plans and know that, with the passage of time,
18 it's going to work itself up and if what we are actually
19 doing, then, is manipulating the normal course of events?

1 I just wonder, you know, that the hurdles that
2 we're trying to address quickly, were they addressed
3 anywhere else; or did it just work itself out with the
4 passage of time?

5 MS. CHASSER: I don't know that I could speak to
6 that because I don't know if there's a protocol to see
7 that.

8 MS. STROHECKER: We'll get back to you.

9 MS. BERESFORD: Certainly, we haven't had any
10 educational programs for foreign filers.

11 MS. STROHECKER: Exactly.

12 MS. BERESFORD: They've figured out how to use
13 our web site and our filing their applications into the
14 United States using that, using the TEAS web site.

15 So I don't -- I don't know what percentage of
16 foreign filers file electronically. But it sounds like,
17 at this point, it might be over 50 percent of them. So
18 we're actually doing better. Maybe we should stop the
19 educational programs. Just kidding.

1 MR. ALEXANDER: What is the PTO's plan for 110?

2 MS. CHASSER: We have not yet made that
3 decision. Is that safe to say?

4 MS. BERESFORD: I think that's safe to say. It
5 was proposed -- it was part of the proposed rule package.
6

7 And, Anne, was absolutely correct. Very -- I
8 think we had -- out of our 60 comments, we had one
9 negative comment about eliminating Rule 110 for trademark
10 documents.

11 MR. ALEXANDER: You basically feel you're free
12 to go ahead with that any time you want to. Do you want
13 any input from the TPAC on that?

14 MS. BERESFORD: Well, of course, we're always
15 interested in input from the TPAC. And I don't know that
16 it's a correct statement to say we feel we're free to do
17 this any time we want.

18 We saw, we have the input from the responses to
19 the proposed rule. But we're really trying to put

1 together a real thoughtful approach to electronic filing
2 that will get us to our stated business goals and keep us
3 within our budget without inflicting too much pain on
4 everybody else.

5 MR. ALEXANDER: I said free to do it. I didn't
6 mean cavalierly. I meant thoughtfully.

7 MS. BERESFORD: I know.

8 MR. ALEXANDER: But the only reservation I've
9 heard here to losing the mailing date as the filing date,
10 clear reservation, is the person that doesn't have access
11 to the internet whose clients will suffer as a result of
12 that and there's no exception for that; whereas everybody
13 who has access to the internet, has a choice. That person
14 may have no choice and may be guilty of malpractice as a
15 result of not advising the client.

16 MS. KANE: I guess I'm not so sure that
17 everybody is as educated in this room. And, in fact, I
18 have a feeling that there are a lot of people who file
19 trademark applications. And I don't mean the individual

1 practitioner necessarily. But, I mean, firms with people
2 filing trademark applications that don't fully understand
3 what the consequences are in this situation.

4 And I'm concerned that if the patent office
5 says, all right, you can do it this way or you can do it
6 that way but you have to pay a little more for doing it
7 that way because it's just more costly, there is a danger
8 that people will think they're equal. But in fact
9 they're not because you really are risking a situation
10 where somebody else comes in electronically and they beat
11 you to it, and that can make a big difference.

12 If you're going to do something like this, you
13 need to be sure that all the trademark practitioners
14 understand that; otherwise, you are maybe...

15 MR. ALEXANDER: Is that really possible, though?

16 MS. KANE: Well, it may not be possible. So I
17 am worried about the conduct of things. You can do it
18 this way; you can do it that way. But you know what? If
19 you do it this way --

1 MS. KORNIWICZ: First one that gets there wins.

2 MS. KANE: Well, yes. But you're not letting
3 people necessarily know that, after years of being able to
4 count on the day you put it in the mail, you are no longer
5 not able to do that unless it's one of...

6 MR. MULLER: Isn't that true today if you file
7 by mail that, if you didn't file by 110, you had to send
8 it through the regular mail? It's just the educated
9 practitioner gets the earlier date. I mean, I don't see
10 that as the big difference. You're changing the media not
11 the rules.

12 MR. ALEXANDER: For the person who's never read
13 the ITU statute and still waits for use.

14 MR. STIMSON: I have a little concern with all
15 the important issues we've got still to go in terms of
16 surcharges and workload and things like that, and we're
17 spending all this time on something which really affects a
18 very -- you're talking about people that have no access to
19 the internet that are going to miss priority by a few

1 days, which I think is probably an extremely rare
2 occurrence. I'm not saying that it's not important. I
3 think too much time and our energy has been spent on going
4 into this.

5 MR. ALEXANDER: Let's try to bring it to closure
6 quickly. We've had a lot of discussion. How many members
7 of TPAC are comfortable with eliminating the availability
8 of 110 for nonelectronic filers? I think you have your
9 answers. Passed.

10 MS. CHASSER: Okay. The next key issue that we
11 presented, and gave you a position paper on, is the issue
12 of replacing paper with electronic records. Based on the
13 offerings that we provide through our web site that's
14 available to anyone in the world 24-hours-a-day,
15 7-days-a-week, we wanted an opportunity for the TPAC to,
16 again, comment on the value of using users fees to
17 maintain the paper-search files in Northern Virginia,
18 given that all of the offerings are available through our
19 web site and through the internet.

1 MR. ALEXANDER: Let me back up just for one
2 minute. For the reporter's purposes, it's hard to record
3 raising of hands. I think the vote was six in favor; one
4 against if I'm not mistaken, on the voting; two not voting
5 I think.

6 I'm sorry. Did I make you lose your train of
7 thought completely with my comment?

8 MS. CHASSER: No, I'm just throwing it out on
9 the floor for discussion.

10 MR. STIMSON: I'm looking for a report. Did we
11 take a position on this earlier? I thought that we had.

12 MR. ALEXANDER: State the proposition again,
13 would you, Anne?

14 MS. CHASSER: The question is this: "Given the
15 TPAC's comments on the value of continuing to use
16 trademark user fees to maintain the paper-search files in
17 Northern Virginia given that all the electronic
18 alternatives are available through the USPTO web site."

19 MS. BERESFORD: Anne, may I just say something?

1 MS. CHASSER: Yes.

2 MS. BERESFORD: And I think we're talking about
3 \$2 to \$6 million a year to maintain the paper-search file.
4 The records that the -- the survey that was done, shows
5 that we have an average of 35 users a day in the
6 paper-search area using the paper records. A very large
7 percentage of the paper records are generated out of the
8 electronic system.

9 These are all -- I think probably you had an
10 issue paper on this. But for those of you that didn't get
11 a chance to read it, these are all part of our
12 consideration in doing this. And I thought you might want
13 to know how much money we spend doing this and what the
14 use is of that facility.

15 MR. PRICE: Is there a point in time at which a
16 decision on this issue must be made related to the move to
17 Carlyle?

18 MS. CHASSER: Well, again, this was a request
19 for public comment. And I actuality will let Doug

1 Bourgeois talk about that. This is really his area of
2 responsibility and maintenance of the search area in terms
3 of the transition.

4 MR. BOURGEOIS: There was a Federal Register
5 Notice that was closed at the end of September and was
6 issued for another 30 days to the end of October for
7 public comments on development of a plan to eliminate the
8 paper in the search rooms. And that plan, we're taking
9 all that feedback into consideration. And that plan is
10 being developed now.

11 With respect to this question currently on the
12 floor, I think there are two important things that need to
13 be brought out on the table. One is that the \$2- to
14 6-million, it's not an all or nothing because there's
15 still a desire to maintain an electronic-based search room
16 locally.

17 And so while there is a certain amount of that
18 cost that can be defrayed from maintaining the paper,
19 there is still a desire to maintain an electronic search

1 facility.

2 And, second, I think it boils down to the
3 similar issue that we've just discussed prior to this one.

4 Which is there is additional cost to the USPTO for the
5 maintenance of the paper files over and above the
6 maintenance of the electronic files. And as we transition
7 to an electronic-based system, at this point we are
8 nearing, if not past, the point where the electronic files
9 are actually higher data quality and they are driven
10 (inaudible) by the issue of marks and OGS are from
11 electronic files. So it actually becomes the source.

12 So both of those things are important to be part
13 of the decision.

14 MR. ALEXANDER: What was the principle argument
15 of those who posed elimination of paper filing? Was there
16 any substantive argument indicating that there would be
17 files that there would be no access to?

18 MR. BOURGEOIS: No. Accessibility was certainly
19 not one of the reasons that you said. You might have

1 mentioned something like that. There were a lot of
2 questions that were raised. And none of which, in our
3 conclusion, that cannot be overcome.

4 MR. ALEXANDER: My question at the last meeting,
5 if I recall, was did we have a fail-safe secondary hard
6 drive system that made sure that everything didn't go down
7 and all these files were lost forever. That was only my
8 reservation. And I was pretty well assured that we did
9 have fail-safe system.

10 MR. BOURGEOIS: The data is backed up by several
11 mechanisms. One of the things that we've done is added a
12 redundant server in the last three months just to make
13 sure there's real-time data back up. There's data being
14 backed up on tape and being moved to different locations.

15 And so I think there's a rule of thumb that is you never
16 want to go to just one back-up source. And multiple
17 sources, especially on the trademark side, the back up is
18 quite robust.

19 MR. ALEXANDER: I don't know if we ever reached

1 a conclusion in the TPAC report.

2 MR. BOURGEOIS: We didn't.

3 MR. ALEXANDER: Well, we sort of had public
4 commentary coming up on it. And even warehouse paper can
5 go up in smoke. So there's never any fail-safe system for
6 everything. If an atomic bomb goes off or you suffer an
7 earthquake, your system may be gone. But it seems to be
8 that your electronic system was protected.

9 MR. WEIR: We make use of both the electronic
10 and paper record. And we're on record on a number of
11 occasions of detailing how electronic data is not in many
12 cases complete, you know, particularly with regards to
13 designs. Designs that aren't in-system. Designs that
14 weren't scanned into the system. And a terrible error
15 rate with regard to design coding which is how you have to
16 search them.

17 We've done a number of studies of it over the
18 last three years. And, generally speaking, the design
19 error rate is anywhere from 20 to 28 percent in any given

1 time period we look at.

2 Since the office quit maintaining rather
3 arbitrarily the pending file last November, there is
4 essentially no way to do an accurate thorough search of
5 design marks filed since approximately the middle of May
6 of last year.

7 Now, you talk about the cost of maintaining the
8 paper on top of everything else. How much of that is
9 offset by the use of the copier and other things in the
10 search library?

11 MR. BOURGEOIS: Very little. I don't have
12 offhand. But you've got to look at --

13 MR. WEIR: I mean just to look (inaudible) --

14 MS. CHASSER: We have made SIPRs available in
15 the public search room. And we've seen that the use of
16 the electronic data base has increased significantly, and
17 the duplicating cost of duplicating paper records has gone
18 down. It has been the complete opposite. So we see that
19 the public is interested in using our electronic data

1 base, you know, quite a bit more.

2 MR. ALEXANDER: Is there anything other than
3 design error?

4 MR. WEIR: There's errors across the board.
5 It's not quite with the extent of the errors of design.
6 Those are the particularly troublesome ones.

7 But there are problems that result, have come to
8 result, from the OCR scanning, poor data input, people
9 punching in zeros instead of the letter O, some strange
10 software quirks. Particularly, if you compare X-search
11 (ph) and text on a side-by-side basis, they're not the
12 same.

13 You know, the search that you can do in the
14 trademark search library or X-searches are dramatically
15 different for one that you can do on-line on text. There
16 are a variety of functions that are available on X-search.
17 Particularly, again, when it comes (inaudible), it's the
18 easier one to illustrate. But there are a number of
19 functions that are present on X-search that are not

1 present on text.

2 Doing a design search, again, on TEAS is -- even
3 if you've got high-speed broadband access like we have in
4 our office, the amount of time that it takes to
5 individually go through each image rather than displaying
6 25 at a time, as you can do in the search library, just
7 increases the cost.

8 And we're not -- we do a lot of searching for a
9 lot of individuals, a lot of law firms, and a lot for
10 Fortune 500 companies. The number of 35 people using the
11 paper-search records may or may be not true. I'm not sure
12 what the exact number is.

13 But I do know the people who do do the search
14 in-house research is probably, off the top of my head, I'd
15 say about 85 percent of the Fortune 500 companies in this
16 country and virtually every large trademark practitioner
17 for a law firm in the country as well.

18 I probably shouldn't say this, but I know that
19 we do a lot of work for Wal-Mart. And that for a period

1 of time, they had staff that were doing their searching
2 in-house using text.

3 There's been a number of case over the last
4 couple of years where large companies, large law firms,
5 have had their employees use TEAS to do prior searches
6 have stopped using people who use the search library for a
7 period of time, and then they come back when the
8 litigation starts because they've missed something.

9 I'm not going to say that we're against going
10 strictly to the electronic search feature. I'm just
11 saying you're not ready for it at this point in time. The
12 system is not viable enough to give you accurate result.
13 There's not enough quality control over the data that's in
14 there. And the possibility that you're going to miss
15 something is rather high, particularly for our designs.

16 We got somebody here from Kodak. I'd be curious
17 if you did a search -- let's say you had a packaging that
18 you were going to put out on a new film product and did
19 you a search of designs and product packaging, that sort

1 of material. Through no fault of your own, you missed
2 something because it didn't get scanned or coded properly
3 and you couldn't find it as a result of a legitimate
4 search.

5 What would the cost to Kodak be if you suddenly
6 launched your product, found yourself in litigation, and
7 then had to destroy all of your inventory, your ad copy,
8 your plates? They're above and beyond the litigation
9 issues.

10 MR. ALEXANDER: Obviously, not a low cost.

11 MR. WEIR: That's the kind of situation we deal
12 with every day.

13 MR. STIMSON: I had a question about the Federal
14 Register. How many comments did you get on the proposed
15 change, and what was the breakdown between support and
16 those raising in concerns?

17 MR. BOURGEOIS: I don't know those numbers
18 offhand. But it was roughly a few dozen comments. The
19 breakdown, I don't have in.

1 MS. CHASSER: One thing I'd like to point out is
2 that all of the records in the public search room come
3 from our electronic record. Okay. And then the other
4 thing I'd like to point out is that the electronic record
5 is the record that the examiners use in the examination of
6 applications.

7 So I think we're probably getting into a
8 philosophical argument that we can't probably win today.

9 MR. ALEXANDER: This is relevant. It's a public
10 forum. So I think we really need to spend a little more
11 time on this because you're talking about millions of
12 dollars. And I take it -- well, Joe had a question.

13 MR. NICHOLSON: Just a question for the
14 gentleman from JLS.

15 The studies you say you've done over the last
16 couple of years, have you made those studies public?

17 MR. WEIR: We've sent copies to the
18 Commissioner's Office. Have we publicly gone to
19 "Intellectual Property Today" or something like that? No.

1 MR. NICHOLSON: Is anyone aware of any other
2 studies, independent studies, as to the viability of the
3 data?

4 MR. WEIR: I know that NIPPER has asked for one
5 to be done, an independent third party exam, of all the
6 automated systems. Whether that's actually been
7 entertained or not, I don't know.

8 MR. ALEXANDER: Anne, you had indicated that
9 everything that is in there now is put in there
10 electronically. Are you saying that USPTO stopped putting
11 in paper at a certain point?

12 MS. CHASSER: Right.

13 MR. ALEXANDER: So that --

14 MS. CHASSER: Now some of the classes -- and
15 correct me if I'm wrong. Everything that is in the public
16 search room and some --

17 MS. STROHECKER: All the newly filed
18 applications that were filed since January of, I believe,
19 1999 have been generated from our electronic data capture

1 system. And that us whether they are filed electronically
2 or whether they are captured electronically from
3 paper-filed applications.

4 They have been generated from the TICARS, the
5 Trademark Image Capture and Retrieval System, since
6 January of 1999. So in a sense, they're one in the same.

7 The paper copies should be no different from the
8 electronically produced copy. It's the same thing.

9 MR. WEIR: But that is not the case.

10 MS. STROHECKER: And then the registration
11 certificates have been generated through our electronic
12 data base since, I believe it was, March of 2001 -- 2001.

13 MR. ALEXANDER: As I understand, this gentleman
14 is saying what's going in now, it is still done
15 unilaterally; but the PTO stopped putting in paper. So
16 now what's available in the search room is electronically
17 generated; therefore, any mistakes in graphics are going
18 to be here anyway.

19 MS. STROHECKER: Correct. The record is the

1 same. In other words, we no longer photocopy paper copies
2 of paper-filed applications. We have not done that now
3 for a few years.

4 MR. ALEXANDER: I guess the question is, be it
5 right or wrong in making that decision, doesn't the matter
6 become moot over a certain period of time? If there's no
7 longer any paper graphic files there for a period of
8 years, it's garbage-in garbage-out essentially. If you're
9 going to get any mistake, it's going to come out as a
10 mistake either way whether you look at in the search room
11 in paper form because the paper form is nothing but an
12 electronically reproduced --

13 MR. WEIR: No, no. Because what you had was if
14 you had a piece of paper that was filed as a trademark
15 drawing page that's scanned and there's a review of the
16 image of the actual drawing page, regardless of whether it
17 has design on it or it's a typed workmark.

18 The way it used to be handled was an exact
19 replica of that particular drawing paper is going to be

1 inserted in the search records. And those replicas are
2 still available. You can't print those from TICARS. You
3 can actually print what was filed, be it electronic or it
4 be paper.

5 For a period of time, the agency was creating
6 drawing pages from the electronic data. They weren't
7 actually submitting -- they weren't putting in there what
8 was actually filed but what their system told them what
9 was filed. Sometimes you got bad data; sometimes you
10 didn't.

11 MR. ALEXANDER: Now, it's being scanned.

12 MR. WEIR: It's being scanned as is. And
13 sometimes the image takes; sometimes the image doesn't.
14 Sometimes the OCR picks up the image; sometimes it
15 doesn't. If you got a two-tone image, it comes up as a
16 black blob. And then there's a lot of it that's in the
17 hands of the coding.

18 MR. ALEXANDER: Is there any way to go back to
19 the original filing for any hint that there may be a

1 problem?

2 MR. WEIR: No. For instance, if you've got a --
3 if you got a design of a fish, the image may be fine. But
4 if the coding people code it improperly, if they code is
5 as triangle, no matter how many searches we do -- fish,
6 animal, whatever -- you're not going to find that design.

7
8 But when the paper copy went downstairs to the
9 library, it was given to a different staff and had a
10 different way of coding. And so you had a double check.
11 It was an independent method of classifying the drawings.

12 Or if something were entered improperly -- we've
13 seen this instance. There was a mark filed for Zenith.
14 The OCR software picked it up as Lenith with an L. If you
15 search the electronic systems, the only way to find it is
16 by searching L-e-n-i-t-h.

17 But when the paper copy went to the trademark
18 search library, the clerks there properly recognized that
19 it was a Z and filed it properly. So, again, you got the

1 double check.

2 MR. ALEXANDER: I don't know that we're going to
3 be able to resolve this here.

4 MS. BERESFORD: May I comment? I have a
5 question.

6 MR. ALEXANDER: Sure.

7 MS. BERESFORD: Sir, what percentage of errors
8 are you seeing? You're talking about coding errors which
9 I think probably people here have no idea about design
10 coding and how design coding works with the electronic
11 system. So I think that you're creating a really false
12 impression talking about that kind of thing.

13 But in terms of your saying where marks are just
14 completely missed and the wrong mark is put in, do you
15 have any percentage of time that that happens?

16 MR. WEIR: Where there's actually no image?

17 MS. BERESFORD: Where the wrong mark is put into
18 the data base.

19 MR. WEIR: Of the 20 percent?

1 MS. BERESFORD: Of the 20 percent.

2 MR. WEIR: Of the 20 percent error rate that
3 we're saying? Or are you --

4 MS. BERESFORD: What are you talking about 20
5 percent error rate? I mean, are you talking about errors
6 in addresses?

7 MR. WEIR: Errors -- no, errors in design
8 features only, only looking at the designs.

9 MS. BERESFORD: And talking about coding.

10 MR. WEIR: We can break it down by coding.

11 MS. BERESFORD: Okay.

12 MR. WEIR: Whether there's not an image there at
13 all; whether the wrong image is there.

14 MS. BERESFORD: Okay. Does everybody on the
15 committee understand what design coding is? No. Okay.

16 Under the electronic search system to search
17 designs, the way they're searched is you code what the
18 design is. There's a treatise from WIPO that sets out
19 design codes. They are six digits. There's a six-digit

1 series for humans, a six-digit series for animals, a
2 six-digit series for, you know, constellations and stars.

3 And the people who code these designs put those design
4 codes in so you can find them when you search designs.

5 You don't actually put a picture of a star in
6 there; you don't put the word star in there; you put
7 design code for star in there.

8 So when he talks about missing design codes,
9 he's about talking about the design coding that's on the
10 -- that's used to indicate where the design is. So just
11 as an educational point.

12 And we tend to way over-code. So a lot of times
13 there's -- you can argue about whether a code needs to be
14 there or not.

15 But in terms of errors, it's a very -- this is,
16 obviously, as you can see, it's a kind of a complex idea
17 that the wrong design code is there. It may be the design
18 code is a fish and a triangle because the fish is made up
19 of triangular little shapes because of the way it was

1 designed. So there's lots and lots of ways that you can
2 count errors here.

3 I'm really trying to see if there is any
4 information on errors that are actually a missed mark or
5 --

6 MR. ALEXANDER: Let me cut this off because
7 we've got other items on the agenda.

8 MS. BERESFORD: Yeah.

9 MR. ALEXANDER: And I take it a decision is not
10 going to be made between now and our May meeting on this.

11 MS. BERESFORD: I don't know what the -- I don't
12 know where the decision-making process is at this point.

13 MR. ALEXANDER: Do you have any idea?

14 MS. CHASSER: It is really in the CIO area.

15 MR. BOURGEOIS: I'm not sure what the time line
16 is to what you're referring. But the plan still is to be
17 developed through Congress.

18 MR. ALEXANDER: So we're not likely to see any
19 action taken before May, given the nature of the search

1 length. Is that a fair statement or not a fair statement?

2 MR. BOURGEOIS: I believe that is a fair
3 statement.

4 MR. ALEXANDER: I think we've got other items on
5 the agenda. And absent objection, I'm going to move on
6 because I don't know whether we have enough information to
7 make the recommendations if we're inclined to. But I
8 think it would be helpful to have a check between, Lynne,
9 the two of you --

10 MS. BERESFORD: Sure.

11 MR. ALEXANDER: -- to find out the actual
12 percentages there are and compare to them those that have
13 been represented to be the case.

14 MR. WEIR: Thank you.

15 MR. ALEXANDER: And we thank you for your input.

16 MS. CHASSER: I think at this point I would like
17 to turn over to Lynne Beresford.

18 MS. BERESFORD: Lynne Beresford is challenged
19 when it comes to using Powerpoint. You may notice I don't

1 have any slides in there. When I started doing my
2 Powerpoint slides, I discovered that I could cut that
3 little logo in half and never get the other half back.

4 MR. ALEXANDER: Then you get to sit here.

5 MS. BERESFORD: So I am just going to be using
6 talking points which are in your notebooks so you can
7 follow along.

8 We have our results for the first quarter from
9 the Office of Trademark Quality Review. And the clear
10 error rate, which is the clear error for those of you who
11 haven't heard this before, is errors that are really
12 unarguable and effect the registrability of the mark, of
13 the subject mark. So we're talking about failure to cite
14 a clear 2D reference. Or registering something that's
15 clearly descriptive would be a clear error under the
16 Office of Trademark Quality Reviews standards.

17 And our rate for this first quarter was 3.3
18 percent of the about 2,000 files that they looked at in
19 the first quarter.

1 We had some concerns, and I'm just flagging
2 this. We have some concerns about this number because our
3 -- we should be happy. Our results from the Office of the
4 Trademark Quality Review are better every quarter. The
5 numbers keep getting better. Our error rate keeps going
6 down. And we should all be probably happy about this.

7 Unfortunately, in terms of our customer numbers
8 and some other indicators we have, those of the Office of
9 Trademark Quality Review numbers are going in a different
10 direction from comments that we've received from our
11 customers.

12 And, also, as I said, when we started the
13 Excellent First Action quality pilot, although it's too
14 soon to talk about the numbers, they've only looked at a
15 few hundred applications and they're using a different
16 standard. They are looking at Excellent First Actions
17 versus first actions that have clear errors.

18 It's still obvious that there is a big gap
19 between the error rate they're finding and the error rate

1 of the Office of Trademark Quality Reviews. So we're in
2 discussions with the Office of Trademark Quality Reviews
3 to look at their methodology and other issues concerning
4 their work.

5 Earlier discussed, I prepared a Federal Register
6 Notice on the Electronic Publication of the Trademark
7 Manual of Examining Procedures. The electronic
8 publication would be the official TMEP. The paper TMEP
9 would no longer be the official TMEP. And we think this
10 is the way that we can actually provide better service
11 because we will be able to update the chapters as
12 necessary and not go through the whole cycle that's
13 required when we paper publish the whole TMEP at one time
14 which usually takes a couple of years.

15 So that Federal Register Notice has been
16 prepared. It's going to be -- it has to be vetted by the
17 Office of the General Counsel. And as soon as they
18 approve it, it will be published for comment. And we will
19 be asking people to comment on the electronic TMEP.

1 We've already had indications from the
2 Government Printing Office that, even if we don't ask them
3 to print the TMEP, they will probably print it. It's one
4 of their best sellers. And we've also been approached by
5 a private vendor already, asking if they can publish the
6 TMEP in paper for those who don't want to use it
7 electronically.

8 So I don't think that there will be an issue of
9 not having a paper TMEP. But the official TMEP will be
10 the electronic TMEP.

11 And as Anne said, the version that we have right
12 now is in PDF. It's easy to print. It's done chapter by
13 chapter. You can print the chapters if you love the feel
14 of paper in your fingers. And it's easily searchable in
15 the PDF format. So we feel it's very user friendly.

16 The plan is to put it up as soon as possible in
17 PDF format chapter by chapter. Then in about three
18 months, we hope to have yet another electronic version
19 which will be more readily searchable which will have some

1 search tools with it that the PDF one doesn't have. And
2 that will go up beside the PDF one.

3 So you can have either version. Both will be on
4 our web site. You can download them to your home computer
5 or your office computer if you want to. So all of that
6 will be coming up very soon.

7 We're, also, developing in the quality area a
8 quality index. You saw an earlier slide which said our
9 quality goal is 6 percent. And last year, we were at 3.4
10 percent. And the reason that that number was there is
11 because that 6 percent actually went to a number that we
12 will be aiming at when we get our quality index developed.

13 In preliminary discussions, the quality index is
14 going to have really three parts. We're going to look at
15 examination quality and underexamination quality. We're
16 going to look at our customer service numbers, our Office
17 of Trademark Quality Review numbers, our internal quality
18 review numbers, and then a part of the quality index
19 devoted to ITU and the actions coming out of the ITU

1 because they do a lot of work with our customers and want
2 to see what the work quality is; and we'll have a
3 post-registration quality number.

4 And those three numbers, those three big
5 numbers, will roll up into a single quality index. So
6 that's something that we hope to have developed by the end
7 of the year and roll out for the fiscal year.

8 Next you see just a heads up in case you're
9 suffering through our TEAS web site where we're dealing
10 with what appears to be a serious upswing in 2A marks.
11 We've had some articles in magazines and newspapers
12 talking about the garbage that's at the PTO web site. And
13 sometimes they get it wrong and say PTO has registered,
14 and then they list some marks there even though they're
15 just pending that application. But we're seeing a
16 seriously large amount of these particular kinds of
17 filings.

18 We have our Excellent First Action pilot
19 underway. Our reviewers who are part of our detailees

1 have developed a model. And they are looking at probably
2 50 or 60 different issues in every first action. They're
3 ready to apply that model to those first actions. And
4 they already, even though it's early on in the pilot, are
5 getting lots of good feedback.

6 One of the things they're getting feedback on is
7 deficient search strategies. And Sharon and I are already
8 planning training to talk, to help people make their
9 search strategies more efficient.

10 And, in fact, if you look at the OTQR results in
11 the second line of my talking points, you'll notice that
12 our rating for deficient searches was up. It's 4.9
13 percent in the first quarter. It was 2.7 percent in the
14 last year. And so we were -- so they -- in that
15 particular regard, they are, in fact, tracking what we're
16 seeing in our pilot Excellent First Action group.

17 And if you remember from other meetings talking
18 about the business plan, there is the idea that we will
19 establish an Office of Internal Quality Review within

1 Trademarks. This pilot program, our Excellent First
2 Action, is the first step towards looking at the Office of
3 Internal Quality Review.

4 And then I have some information about training.

5 Sharon Marsh and others have done law-office-by-law-
6 office training on 2D and 2E. They've done very
7 interactive training. And the idea, of course, is to
8 improve our consistency in handling the quality of
9 refusals from Section 2D and 2E.

10 We are especially concerned with refusals that
11 made being improperly where they look more like the
12 examining attorney does not sincerely believe that there's
13 a 2D or 2E problem but is merely making sure that they
14 cite something that the managing attorney might be
15 interested in. So we're really trying to narrow in on
16 what a good 2D and 2E refusal is.

17 We, also, had training last month that focused
18 on the importance of trademark registration. We have had
19 practitioners come in and talk to us about why they

1 register trademarks and how important that registration
2 document is to them, and, also, talk to them on a
3 practical level about what happens when we issue an
4 improper office action or when we don't do the right
5 thing. So I think that was important.

6 And we have a very ambitious training schedule
7 this year for our examining attorneys, for our paralegal
8 staff, and for other people working for us in the
9 Trademarks office. And I think, hopefully, we'll some
10 quality results from all of that.

11 So that's my brief report. And if you have any
12 questions, I'll be happy to answer them.

13 MR. MULLER: Are you seeing an upswing in
14 disparaging marks, or is it (inaudible)?

15 MS. BERESFORD: We always have some disparaging
16 marks, but I don't think we've seen an upswing of those.
17 We're quite conscious of those marks, and I don't think we
18 see an upswing. But we really have seen a large number of
19 2A marks, some of them pretty jaw-dropping.

1 I was driving with Carlyle Walters, one of
2 Trademark (inaudible) law judges the other day. And she
3 says, "Guess what case is before me?" And she told me. I
4 almost drove us off the road.

5 So, yeah, I think these things will all be
6 public record sooner or later. But if people come to you
7 and say, Oh, that office, what they're doing. Remember
8 anybody can file a trademark application.

9 MR. ALEXANDER: Before you sit. In your
10 section, there's a Madrid Protocol section as well. Do
11 you want to update us as to where you think that is in
12 Congress? And then I'll have a question for you.

13 MS. BERESFORD: Madrid Protocol, the House
14 passed the legislation last year. The Senate Foreign
15 Relations Committee has reported out both the implementing
16 legislation to the full Senate and the package to the full
17 Senate. That happened about a month and a half ago. I
18 hear nothing.

19 John, feel free to jump up and say something if

1 you'd like to. But I hear nothing negative about Madrid.

2 MR. KENT: I've been in touch with the Senate.
3 I think we're close to getting the implementing bill
4 passed by the full Senate perhaps in this week. And if
5 that happens, then it has to be agreed to by the house and
6 proceed. And then the resolution can come to the floor,
7 so the Senate...

8 MS. BERESFORD: So there you go.

9 MR. ALEXANDER: I agree. I had raised the
10 question about our Committee really never having addressed
11 some of the criticisms of the Madrid Convention. We as a
12 committee supported it, but there have been some
13 articulate articles written by respected practitioners
14 where they think there are some reservations about it.
15 There are some people who are further out in terms of
16 their opposition for different reasons than just benefits
17 to the United States and to trademark users.

18 The one criticism I have heard is -- I think
19 there's an answer, also. But I'd like to at least place

1 on the table that it's going to create a lot more deadwood
2 with the five-year period of time and make it more
3 difficult for companies to clear marks that
4 internationally are going to on various registers,
5 including the U.S. Patent and Trademark Office
6 registrations. And the petition to cancel is not really a
7 way to clear a mark if you have got a bunch of deadwood on
8 record.

9 My understanding is that experience in Japan and
10 elsewhere indicates that the deadwood is not increased in
11 proportions that one might argue would exist. What is
12 your reading on that?

13 MS. BERESFORD: Well, obviously, our market is
14 unlike any other in the world. Our filing patterns are
15 unlike any other in the world, too, in the sense that most
16 of our filings, 85 percent of our filings, is domestic
17 filing. Not the case in most countries.

18 So when we talk about Japan, which has a filing
19 level of about 100,000 applications a year, when they

1 entered Madrid over a year ago, I think a lot of people
2 thought, for a couple of reasons, that they would be
3 swamped by the Madrid application process.

4 One, they had a very long waiting time for new
5 applications. It was like two years to get your first
6 action on your application. So Madrid -- they signed up
7 for, I believe, the one-year option under Madrid. So if
8 you come in the Madrid system, you guaranteed yourself
9 getting examined twice as fast.

10 So we thought that would be pressure for filing
11 in Japan. In addition, Japan is a pretty big consumer
12 market. And you can file a Madrid Protocol like we file
13 in England into Japan. So there was another incentive.

14 But the Japanese experience, both filing for
15 foreigners and internally, is they've been -- that there
16 hasn't been that much filing.

17 In the first year under Madrid, they averaged
18 less than 200 extensions of protection a month into Japan.
19 So you're talking about a really large filing system.

1 And they just have not seen that impact that one would
2 expect.

3 The British trademark offices had pretty much
4 the same experience, but they're a much smaller operation
5 than Japan. They, also the Japanese, have found that even
6 though they went to their big law firms and educated them
7 on Madrid and they made sure everybody understood how to
8 operate the system and how to use the forms and everything
9 else, they had even fewer filings from their national
10 applicants into the Madrid systems.

11 I mean, they had filings coming in. They
12 started out at like 15 a month and slowly went up to about
13 50 a month. So we're talking really small numbers.

14 Now, will this translate to the U.S.? It's hard
15 to say. We, one, don't think we're going to get a huge
16 influx of filings; two, the Madrid system does allow, does
17 require, the filing of an affidavit of use between the
18 fifth and the sixth year after registration. So we have
19 that in place, too.

1 So those are kind of the reasons that we think
2 that it is not going to create a big problem for us. We
3 will, of course, if we actually ever get in and that
4 remains to be seen. I've been saying this for, I don't
5 know, ten years now. Then we'll see what happens,

6 MR. ALEXANDER: Thank you. Any other questions?
7 Anne, did you have anything else on the agenda?

8 MS. CHASSER: Nope.

9 MR. ALEXANDER: I thank everybody for being
10 here. Anybody have any comments for the good will for the
11 group before we leave?

12 MS. CADE: Chief Union (inaudible). And this
13 will be my last meeting. Effective March, I'll be
14 retiring from the PTO after 30 years, 1 month, and 12
15 days.

16 MS. CHASSER: Congratulations.

17 [Several committee members depart.]

18 MR. ALEXANDER: David.

19 MR. STIMSON: There are a number -- I mean,

1 there were a number of things I thought we were coming
2 back to. Like the surcharge, I thought we were going to
3 take position on that. And we broke for lunch when we
4 were talking about the workload versus level of
5 employment.

6 And, also, my third comment that if we're, as we
7 have, putting off the decision on the paper-search room, I
8 hope that when we take it up again at our next meeting
9 we'll have additional information to justify delaying the
10 decision.

11 For example, perhaps a summary of the comments
12 for the Federal Register along with any response to that
13 from the Trademark Office. In other words, if people have
14 raised issues, I think it would be helpful for to us see
15 both sides. But I'm concerned we're going to have the
16 same discussion that we had today with no more
17 information.

18 MR. ALEXANDER: Let's continue for a few
19 minutes. And I don't think a quorum is necessary right

1 now because we're clearly talking about information and
2 opinions. And if you would ask Lynne to make sure to
3 bring back those comparative figures that David was
4 talking about with respect to the search-room information
5 so we know what we're talking about at the next meeting.

6 David, why don't you expand on my outrage.

7 MR. STIMSON: Well, I'm not sure what the status
8 is of the proposal. I mean I think there is this proposal
9 for the 10-percent surcharge on certain types of trademark
10 fees, only, I think, a quarter of it going to Trademark
11 Operations, and the other three quarters going to Homeland
12 Security or defense, but basically going into the overall
13 budget.

14 And to me this is sort of consistent with the
15 fee -- what's the polite term for it? -- diversion --
16 thank you -- in the sense that we are supposed to be
17 user-fee funded. And I just think that if we're not going
18 take a position on that, I'd like to state my own
19 position. I'm opposed.

1 MR. ALEXANDER: I always like to -- because I
2 think, uniformly, we have been opposed to diversion of
3 fees. And this is just another diversion in my opinion.

4 We still have a quorum with five voting members
5 here. I'd sort of like to take a vote and determine those
6 who are for and those who are against the 10-percent
7 surcharge. My view is that, generally, we have, as a
8 group, been against any charge that doesn't go back into
9 the user-provided services.

10 MR. STIMSON: Right.

11 MR. ALEXANDER: Is it a fair statement to say
12 that the five people here cast their vote against the
13 10-percent surcharge?

14 MR. STIMSON: Let's take a vote.

15 MR. ALEXANDER: Okay. Let's go on record -- I'm
16 sorry.

17 MR. ROSE: I just want to say, in principle, my
18 only problem is I haven't heard enough about it. Wasn't
19 the general treasurer -- I thought there were more

1 specific pieces to the extent that they may support, not
2 directly but indirectly, the protection of intellectual
3 property. I'm just a little concerned. I don't know
4 enough about the diversion to be able to say --

5 MR. ALEXANDER: I think the diversion was for
6 security.

7 MS. CHASSER: Only in --

8 MR. ROSE: It's a very general comment about
9 where it was going. It wasn't for the general treasury.
10 As I said before, for these reasons, I don't like the
11 version. I don't think it's appropriate. I just don't
12 know whether there was some specific aspect that we had
13 not heard about that may affect my decision.

14 MR. ALEXANDER: Let me ask a question. The
15 security provided for the USPTO now as a result of 9-11,
16 is that cost coming out of general funds or coming out of
17 the USPTO funds, or does it exceed the amount of the
18 diversion of the USPTO?

19 MR. NICHOLSON: Or is there any way to tell?

1 MS. CHASSER: Excuse me?

2 MR. NICHOLSON: Or is there any way to tell?

3 MS. CHASSER: It's actually coming out of the
4 USPTO funds.

5 MR. ALEXANDER: Essentially, we are providing
6 for the same thing that the --

7 MS. CHASSER: But the fees from the surcharges
8 are designated for Homeland Security. And what was the
9 other?

10 MS. STROHECKER: We get approximately \$45
11 million of the \$207 million, and the remainder was
12 designated for Homeland Security.

13 MR. ALEXANDER: Is it fair to say that the
14 majority of the Public Advisory Committee is against the
15 10-percent surcharges in diversion of funds, the group
16 that is here? And we believe that the group that is here
17 is a quorum; and the group that is not here has generally
18 expressed those concerns as well. There was a third item.

19 MR. STIMSON: Well, there was another one, and

1 I'm not sure what the Trademark office time line is on
2 this. Eventually, there is going to be a decision on
3 workload and staffing levels, depending on what the trends
4 are. If you all don't need to make a decision between now
5 and May and if you're going to have more information in
6 May on filing levels and attrition rates, then that might
7 be a reason to get another three month's worth of
8 experience.

9 On the other hand, if you're going to come to a
10 decision point between now and the May meeting, maybe we
11 ought to give you some guidance.

12 MS. CHASSER: We probably will be looking very
13 seriously at the numbers at the end of March and probably
14 be making some decision in March about our next steps.

15 Whether or not we want to reconvene or do a
16 telephone call about this, that's a possibility. I don't
17 know what the requirement is under the law. If that's a
18 management issue or policy issue, I'm not quite sure on
19 the direction there. Certainly, we'll keep you informed.

1 How's that?

2 MR. ALEXANDER: I think David's point is well
3 taken, Anne. If you want any input for us, if it's going
4 to be too late by the time of our next meeting, then
5 perhaps we ought to express what our views would be in the
6 event there is a requirement that some action be taken
7 that's different than what you're doing now.

8 And given the number of alternatives, everything
9 from lessened workweek to a reassignment further to
10 reduction of some sort...

11 MS. COHEN: May I say something?

12 MR. ALEXANDER: Yes.

13 MS. COHEN: The lesser workweek we referred to a
14 couple of times would really be a furlough that would be
15 run as a RIF, but it would be temporary. It would be
16 temporary in nature. And I'm not sure that that's one of
17 our --

18 MR. ALEXANDER: Alternatives.

19 MS. COHEN: -- permanent alternatives. You

1 know, although certainly, it's something that we could
2 consider.

3 MR. ALEXANDER: As I understood it, you were
4 hoping that you would get through 2002 without having to
5 do something. And if you had to do something in 2002, it
6 would probably be temporary at that point until you saw
7 where 2003 was headed.

8 MS. COHEN: Right.

9 MR. ALEXANDER: So we were looking at what I
10 thought was a temporary fix.

11 MS. COHEN: For 2002.

12 MR. ALEXANDER: Right. And you were not trying
13 to --

14 MS. COHEN: Well, yeah, that's fair enough. I
15 thought you were referring to more permanent fixes.

16 MR. ALEXANDER: No, no, I was not.

17 Anybody want to express themselves on this?

18 MR. ROSE: Well, I just think that across-the-
19 board reductions in workweeks certainly sound an equitable

1 idea, but practice creates a lot of problems, at least in
2 the occasions that I'm familiar with, that, apart from
3 some obvious moral problems, have issues; sort of 80-20
4 rule of your best workers who are capable of identifying
5 other opportunities and may decide to seize those other
6 opportunities.

7 I almost think you're better off trying to
8 develop a situation where you have a workforce that's
9 appropriate for the workload that you have and that you
10 have a contingent force that's able for support for
11 whatever (inaudible) you may have. And whether you manage
12 that targeted reduction in force, or if you, as I
13 understand may be the case, have issues relating to how do
14 you identify people who may be less effective or efficient
15 in terms of operation could be more challenging here
16 because of various (inaudible) and other union contract
17 situations is always a complication for developing
18 incentives that would provide opportunities for certain
19 people to leave.

1 But I think you're much better off doing it as a
2 targeted reduction, having the workforce right for the
3 workload and then having a contingent work part-time or
4 support whatever increase you may experience.

5 As I said, I've just been in a couple of
6 situations before where sometimes the cuts are
7 across-the-board reduction. It just does not work
8 successfully. There are more negatives in that.

9 MS. COHEN: Can I just point out one other thing
10 about the temporary measure that we were talking about?
11 This does take time because of the procedures that have to
12 followed. So it's not something that could be put into
13 place immediately. It probably would be at least several
14 months before that reduction, temporarily, could be
15 achieved.

16 MR. ALEXANDER: Two poignant and helpful views.

17 MR. FRIEDMAN: I think it's sort of unfortunate
18 that we start talking about the time issues about which I
19 would think is by far the most important issue the

1 Trademark Advisory Committee would ever consider at a time
2 when half the members, unfortunately, have to go and we're
3 at the tail end of the day.

4 And I know it's more or less something David has
5 raised in different forms throughout the day, including at
6 lunch, where we spent a lot of time hearing what's going
7 on at the office. But there has been very little
8 opportunity to comment. And it's exasperating that we're
9 now talking about people's jobs and livelihoods, something
10 that we couldn't -- you know, TPABIS (ph) is important and
11 all the other things are important. But they don't come
12 close to talking about this issue.

13 So I would hope -- and I was going to talk about
14 a number of things but refrained because of the fact that
15 we didn't pick up on this issue after lunch which I
16 thought we were going to. And we had a number of other
17 agenda items. I figured nothing was going to be done on
18 this issue.

19 So I can only assume that before the Office

1 would ever take any kind of action that differs from the
2 status quo, whether of a temporary or permanent nature,
3 that this particular body, the full body, becomes engaged
4 and becomes engaged to the hilt.

5 I would comment -- again, and I wish it would
6 have been before the rest of our brethren but also the PTO
7 staff that was here -- is when we first started -- well,
8 what we struggled with the most is what we were going to
9 do with a staff that wasn't large enough that was handling
10 far too many files.

11 And, of course, I would caution this board, as
12 we go through the ebbs and flow of your work and the ebbs
13 and flow of our work, that before you ever do anything of
14 even a temporary nature that we remember to remind
15 ourselves that at one point in time we were talking about
16 hiring hundreds and hundreds if not more than a thousand
17 examiners and had to figure out what we wanted to do. So
18 at the very least, which is much preferred, then what
19 we're talking about now.

1 But at the very least, before we even think
2 about doing anything that affects the current workforce,
3 we spend at least a sufficient amount of time on that.

4 John had talked about morale. And John probably
5 knows far more about the human resources issue than I and
6 probably everybody else in the room collectively. But
7 there's really two types of moral, at least from what
8 limited knowledge I have on the subject.

9 One is the reflex, the morale of the people that
10 leave or get hit or get affected by a RAF or furlough.
11 Two is the morale of people who stay and how they feel
12 about their jobs and how guilty they feel about anybody
13 who might be asked to leave.

14 But the third component that I think is
15 different than maybe how it may work at ABC or Kodak --

16 MR. ROSE: I didn't mean to refer to ABC; and,
17 actually, I wasn't.

18 MR. FRIEDMAN: Anyplace representative of people
19 here or other people we represent is that we know that

1 Patents is going to be hiring a number of people. And I
2 can only suggest that when an agency, as a part of the
3 department that's decides to do something, that it can
4 only have a negative impact on recruitment when it's
5 looking to hire a large part of its workforce.

6 If I had to use a poor analogy, it would be akin
7 to a law firm not across the board letting go people from
8 all departments but rather letting some people go from a
9 certain department while still trying to staff up a
10 department that may be the hot topic that day, that is,
11 the environment or corporate law.

12 While we're the Trademark Advisory Committee and
13 not the Patent Advisory Committee, I would think the
14 Patent Advisory Committee would want to be engaged in that
15 discussion when it gets to about what we do here and we
16 have on the Patent people.

17 And the other area, you know, I can only touch
18 upon because I'm thinking about putting myself in your
19 shoes and having to doing this versus our shoes. It is

1 different when somebody, especially if you're talking
2 about people who have been hired recently -- we've had a
3 lot of people who were hired recently, first job out of
4 law school, making 45 or 50 grand --not 80, not 100, not
5 150 -- where they could be transferred to another
6 department without even thinking about the Office's
7 investment that they'd lose over the first year or two
8 causing any kind of RIF.

9 You know, we have a combination of young people,
10 huge loans. If there's only four people that have seen
11 fit to find jobs elsewhere in the past few months, it's
12 pretty safe to say a lot of those people have hit the
13 streets without any prospects of future employment for a
14 while, unless they're going to be doing something other
15 than legal work.

16 And I think that's a consideration when we think
17 about how we handle people here versus how we handle
18 people in the private sector.

19 MR. ROSE: Howard, maybe your point about having

1 the full airing of this is a good point. And you're weeks
2 away from getting data that may cause you to make a
3 decision. Maybe it would be appropriate to convene at
4 least a working group of this committee to discuss all of
5 the issues. And Howard raised some additional points
6 about transferability of skills, opportunity between the
7 agencies.

8 MS. CHASSER: And those are the kinds of issue
9 we've been looking at. A lot of these decisions are
10 decisions that the Agency has to make, not just Trademark
11 organization. So we're in the process now of gathering
12 all of the information and the data that we can so that we
13 can have a position and a recommendation to present to the
14 whole organization. So no decision has been made.

15 And, of course, know, throughout this whole
16 process, we have been valuing and recognizing the value
17 of, you know, the trained work force that we have.

18 This is a very difficult time and a very
19 difficult decision. There's a lot of issues out there

1 that need to be addressed. And, of course, we will be
2 working closely. I think -- I mean, no decision has been
3 made.

4 MR. ALEXANDER: Let me thank you for your
5 remarks, Howard, because I think they're pertinent. The
6 reason I did not push this agenda item earlier was when I
7 asked did we have a series of choices or recommendations
8 there were none as yet.

9 And for this group as of whole cloth to create
10 recommendations for the management of the PTO or unions
11 without our having some input into the alternative that
12 are realistic struck me as premature to delved into any
13 more than we did.

14 I think we can, certainly, have a telephone
15 conference if a decision has to be made by March. My
16 understanding, and maybe I misunderstood, was we were
17 hoping no decision would have to be made by March because
18 it was a budgetary matter for this year and it was only
19 next year that was likely to become a crisis. If it

1 becomes more of a crisis this year, we can have a
2 telephone meeting as necessary to discuss the alternatives
3 available.

4 And lest you think you're alone in this, there
5 is no law firm or company in this country that I know of
6 that have not had to address this problem either for
7 themselves or for clients or for customers. So this is
8 not a unique situation.

9 Young lawyers all over the country have been
10 laid off in large numbers from the premiere firms with
11 large loans from \$100,000-a-year salaries plus that don't
12 know where they're going to get money to pay off their
13 loans or where they're going to get their next jobs
14 because of a crowded market. So I have great empathy any
15 time we talk about anybody having to cutback or find new
16 employment. And it's not an unsympathetic group that is
17 here.

18 On the other hand, if there's no money to pay
19 people, a decision has to be made and you had have to look

1 at the best alternative that's available that does the
2 least harm or creates the most good.

3 I think John's comments are sort of well-taken.
4 There are some clear choices that are going to have to be
5 made. And the Trademark Public Advisory Committee is not
6 going to be the group that makes that choice. Obviously,
7 it's going to be management in consultation with the
8 union. And all we can do is offer our advice based upon
9 the choices that narrow it down to and perhaps offer some
10 opinions as to which of the two or three alternatives that
11 you decide are available, at least, from our outside
12 perspective, appear to be best.

13 MS. KANE: I agree with what you said. It makes
14 sense.

15 MR. ALEXANDER: Okay.

16 MS. KANE: And if we need to, we can have a
17 phone conference. And, hopefully, we won't need to do
18 that.

19 MR. ALEXANDER: Anything else that we need to

1 discuss? Did we address all three of your issues, David?

2 MR. STIMSON: Yes.

3 MR. ALEXANDER: Thank you, everybody, for being
4 here. And I look forward to our next meeting or telephone
5 conference.

6 [Meeting convened.]

7 -oo0oo-

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CERTIFICATE OF STENOTYPE REPORTER

I, Jane F. Hoffman, Stenotype Reporter, do
hereby certify that the foregoing proceedings were
reported by me in stenotypy, transcribed under my
direction and are a verbatim record of the proceedings
had.

JANE F. HOFFMAN